1913.

SUPREME COURT OF THE UNITED STATES.

No. 158.

SIMON GRATZ'S EXECUTORS ET AL., APPELLANTS,

vs.

SAMUEL M. COHEN ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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Pleas before the honorable the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit.

It is thus contained:

To the honorable the judges of the circuit court of the United States, in and for the third circuit, in the eastern district of Pennsylvania, sitting in equity:

Humbly complaining, show unto your honors your orators, Samuel M. Cohen and Eleazar L. Cohen, citizens of the State of New Jersey, that Joseph Simon, late of the city, then borough, of Lancaster, in the State of Pennsylvania, was in his lifetime, and at the time of his decease, lawfully seized and possessed of and in a large real and personal estate, situate and being in the said State of Pennsylvania, exceeding in value twenty thousand dollars; that in his lifetime the said Joseph Simon, to wit, on the twenty-sixth day of October, in the year one thousand seven hundred and ninety-nine, made his last will and testament, by which, among other things, he constituted and appointed his son-in-law, Levy Phillips, executor, and his daughters, Bilah Cohen and Leah Phillips, executrices, of his said last will and testament; and on the twenty-third day of December, one thousand eight hundred and two, he made and executed a codicil to his said last will and testament; and on the ninth day of February, one thousand eight hundred and three, he executed an additional codicil to his said last will and testament, a copy of which said last will and testament and codicils are hereunto annexed, marked A, which your orators pray may be taken as part of this their bill, by which said will and testament, and codicils thereto annexed, your orators and the other children of Solomon M. Cohen and Bilah Cohen, daughter of the said Joseph Simon, all of whom are citizens of the Commonwealth of Pennsylvania, to wit, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, became, after the death of the said Joseph Simon, and of their mother, Bilah Cohen, interested in, and entitled to, one half of the estate of the said Joseph Simon, as by reference to the said last will and codicils will more fully and at large appear; that the said Joseph Simon departed this life at Lancaster aforesaid, on the twenty-fourth day of January, one thousand eight hundred and four; that the said last will and testament and codicils were, after the death of the said Joseph Simon, duly proved, and remain of record in the office of the register of wills of Lancaster county aforesaid; that letters testamentary were duly granted to the said Levy Phillips and Leah Phillips and Bilah Cohen, the executors and executrices in the said will mentioned, who took upon themselves the execution of the said last will and testament.

Your orators further show unto your honors, that on the sixteenth day of May, one thousand seven hundred and sixty, the said Joseph Simon entered into partnership with David Franks, William Trent, and Levy Andrew Levy, and that an article of partnership, bearing date the day and year last aforesaid, was duly executed by the said Joseph Simon, Levy Andrew Levy, William Trent, and David Franks, which said article is not in the possession or power of your orators; that after the dissolution of the said partnership, to wit, on the fourth day of January, seventeen hundred and sixty-nine, the said William Trent executed a bond to David Franks and Joseph Simon, conditioned for the payment of four thousand and eighty-two pounds on the fourth of January, 1770, with interest from date; and that on the twenty-eighth day of February, 1769, the said William Trent executed to the said Joseph Simon and David Franks, to secure the payment of the said bond last mentioned, a mortgage on seven thousand five hundred acres of land, situate in Cumberland county, in the said State of Pennsylvania, and other property, which said bond and mortgage are in possession of Simon Gratz, or of Leah Phillips, surviving executrix of the said Joseph Simon. That on the eighteenth day of May, 1790, David Franks executed a deed to Michael Gratz and Bernard and Michael Gratz, assigning the interest of the said David Franks in the bond and mortgage from William Trent to Joseph Simon and David Franks above mentioned, to the said Michael Gratz and Bernard and Michael Gratz, their executors, administrators, and assigns, and on the said eighteenth day of May, 1790, an order was drawn by the said David Franks on Joseph Simon to pay to Michael and Bernard and Michael Gratz his, the said David Franks', half share of William Trent's bond and mortgage, dated the fourth day of January, seventeen hundred and sixty-nine, payable fourth of January, seventeen hundred and seventy, as per his assignment to them of the same date; which said order was accepted by the said Joseph Simon on the twenty-second day of May, seventeen hundred and ninety. That on the second day of August, one thousand seven hundred and ninety, a declaration of trust was executed by Joseph Simon, viz., acknowledging that ten tracts of land, bought by him, the said Joseph Simon, at sheriff's sale, on the sixth and seventh of July, one thousand seven hundred and ninety, were for the joint and equal concern of him, the said Joseph Simon, and Michael Gratz, by reason of said assignment to Michael Gratz: Provided, that if hereafter the assignment of Franks to Michael Gratz should prove invalid, then the acknowledgment to be null and void.

Your orators further show, that an indenture, quadrupartite, was executed on the twentieth day of March, one thousand seven hundred and eighty-six, between David Franks of the first part, Amos Hayton of the second part, Richard Harris and others of the third part, and Tench Coxe and Isaac Hazlehurst of the fourth part, conveying divers lands, debts, &c., of David Franks, in Pennsylvania, to Tench Coxe and Isaac Hazlehurst, in trust to pay a debt due to said Hayton from said David Franks, as by reference to the same, a copy of which is

hereunto annexed, marked B, which your orators pray may be taken as part of this their bill, will more fully and at large appear. That on the sixteenth day of May, one thousand seven hundred and ninety-three, a deed was executed by Isaac Hazlehurst and Tench Coxe and David Franks, to George Davis, conveying all the lands of David Franks, wherever situated, and all the debts due to David Franks from any person whatever, and all the right and interest of the said Coxe and Hazlehurst, to the said George Davis, in trust to apply the proceeds of the same to the payment of a debt due from Franks to Hayton, as by reference to the said last mentioned deed, a copy whereof is hereto annexed, marked C, and which your orators pray may be taken as part of this their bill, will more fully and at large appear. That your orators verily believe that the said Joseph Simon was ignorant of the existence of the two last mentioned deeds at the time of his acceptance of the order hereinbefore mentioned, from David Franks, in favor of Michael Gratz and Bernard and Michael Gratz, on the twenty-second day of May, one thousand seven hundred and ninety, and at the time he executed the declaration of trust hereinbefore mentioned, and that he remained ignorant of the existence of the same until about the month of May, one thousand eight hundred and two, when an application was made to him by a certain Thomas Billington, who claimed under the said deeds of twentieth of March, one thousand seven hundred and eighty-six, and fifteenth of May, one thousand seven hundred and ninety-three, before mentioned. That on Joseph Simon having received information of the existence of said deeds, and of a claim under them, Levy Phillips for Joseph Simon, on the twentieth day of May, one thousand eight hundred and two, addressed a letter to Simon Gratz, who acted for his father, Michael Gratz, informing him of the claim of Billington, under the assignments of Franks, of seventeen hundred and eighty-six, and seventeen hundred and ninety-three, before mentioned; to this letter Simon Gratz, who, in consequence of the ill health of his father, Michael Gratz, attended to the business of the said Michael Gratz, and was duly authorized so to do, replied by letter dated the twenty-third day of May, one thousand eight hundred and two, in which he stated that the assignment was made by Franks to Hayton when Mr. Franks was in the hands of the sheriff of London, and consequently not binding; that he, the said Simon Gratz, was well acquainted with all the circumstances long ago, and had a doubt remained on his mind respecting the validity of Franks' assignment to Bernard and Michael Gratz, he should not have taken the immensity of trouble he had on the subject, and that no lands held under Trent's mortgage were included in it; the said two last mentioned letters are not in the possession of your orators, and they are therefore unable to state their contents more particularly. That on the twenty-sixth day of July, one thousand eight hundred and two, Simon Gratz, as agent for Michael Gratz, executed an article for certain considerations therein mentioned, indemnifying the said Joseph Simon against all claims which might be made by virtue and under pretence of a pretended as-

signment from David Franks to Tench Coxe and Isaac Hazlehurst, dated March twentieth, seventeen hundred and eighty-six, which said assignment it was suggested by the said Simon Gratz, and those for whom he acted, was of no force or operation in law; and on the said twenty-sixth day of July, 1802, an agreement was executed by Levy Phillips, agent to Joseph Simon, in consideration of the above indemnity, by which it was agreed to pay Simon Gratz the moneys of the said David Franks which might come into the hands of Joseph Simon, to which the said Michael Gratz might be entitled by virtue of the assignment hereinbefore mentioned of the said Franks, dated the eighteenth day of May, seventeen hundred and ninety.

Your orators further show, that after the death of the said Joseph Simon, on the twenty-fourth day of July, eighteen hundred and six, George Davis, for and in consideration of the sum of six hundred dollars, conveyed and assigned to Simon Gratz all the interest of him, the said George Davis, to the estate of David Franks, and that the said Simon Gratz, on the twenty-ninth day of December, eighteen hundred and six, assigned to his father, Michael Gratz, all his interest in the same; that the said Michael Gratz instituted an action of account *render* against Levy Phillips, Leah Phillips, and Bilah Cohen, executors of the estate of Joseph Simon, to the March term, 1807, of the court of common pleas of Philadelphia county, in the State of Pennsylvania aforesaid, which said action was removed to the supreme court of the eastern district of Pennsylvania, and so proceeded in that the said Michael Gratz did, on the twenty-second day of March, in the year one thousand eight hundred and eleven, obtain a judgment against the said executors for the sum of twelve thousand one hundred and sixty-nine dollars, as appears by the record of the said action, a copy whereof is hereto annexed, marked D, which they pray may be taken as part of this their bill; and that the said Michael Gratz afterwards commenced an action of account *render* in the supreme court of the eastern district of Pennsylvania, to March term, 1811, of the said court, a copy of the record whereof, marked E, is hereto annexed, which they pray may be taken as part of this their bill.

That the said Michael Gratz died in the month of September, 1811, and letters of *of* administration were granted to Simon Gratz, Joseph Gratz, and Jacob Gratz, who took upon themselves the administration of the estate of the said Michael Gratz; that an amicable action in case was entered to the August term, 1832, of the common pleas of Lancaster county, between the administrators of Michael Gratz, plaintiffs, and the executors of Joseph Simon, defendants, a copy of the record whereof is hereunto annexed, marked F, which they pray may be taken as part of this *may be taken as part of this* their bill; and that an action of covenant was instituted in the court of common pleas of Lancaster county aforesaid, to the August term of 1834 of the said court, by the executors of the said Joseph Simon, against the administrators of the said Michael Gratz, which said action was removed to the circuit court of said Lancaster county, and afterwards to the district

court of the city and county of Lancaster, as appears by the record of the said action hereto annexed, marked G, which they pray may be taken as part of this their bill.

Yours orators further show unto your honors, that Solomon M. Cohen, their father, died in the month of February, seventeen hundred and ninety-six, and that Bilah Cohen, their mother, died on the twenty-ninth day of January, eighteen hundred and thirty-three, and that they, and their brothers and sisters heretofore named, are the persons mentioned as the children of his daughter Bilah in the last will and testament of Joseph Simon; that the papers of the estate of the said Joseph Simon were in the possession of Levy Phillips at the time of his death; that the said Levy Phillips died on the fifteenth day of January, one thousand eight hundred and thirty-two, and that after his death the papers of the said estate were in the possession of the said Leah Phillips, one of the executors of the said Joseph Simon; that during the year one thousand eight hundred and thirty-two secret interviews took place between Simon Gratz and Leah Phillips, executrix, citizens of the Commonwealth of Pennsylvania, with the view of depriving your orators, and the other children of the said Bilah Cohen, of their just rights under the will of the said Joseph Simon, which said interviews were concealed from the said Bilah Cohen and her family; and your orators believe, and expressly charge, that John Moss, Isaac Phillips, Lyon J. Levy, and Isaac B. Phillips, citizens of the Commonwealth of Pennsylvania, were, during that year and afterwards, aiding and assisting the said Simon Gratz and Leah Phillips in their design to appropriate the estate of the said Joseph Simon to the said Simon Gratz and Leah Phillips, and deprive your orators, and their brothers and sisters, of the said estate and of their just rights. That shortly after the decease of their mother a fraudulent agreement was made and entered into between Simon Gratz and Leah Phillips, dated February the fifteenth, one thousand eight hundred and thirty-three, a copy whereof, marked H, is hereto annexed, and which your orators pray may be taken as part of their bill; the object of which said agreement was fraudulently to terminate the suits then pending between the surviving executrix of the said Joseph Simon and the administrators of Michael Gratz, by agreeing, consenting to, and causing judgments to be taken against the estate of the said Joseph Simon, to the manifest injury of your orators, and their brothers and sisters hereinbefore named, interested as aforesaid in the said estate; and the further object, purpose, and intention of the said agreement was to fraudulently convey, or cause to be conveyed, to the said Simon Gratz all the real estate of the said Joseph Simon, which said real estate is more particularly set forth in a schedule hereto annexed, marked L, for a consideration entirely inadequate, and known so to be by the said Simon Gratz and Leah Phillips, and to transfer, without an adequate consideration, to the said Simon Gratz the debts due to the estate of the said Joseph Simon; and that the said Leah Phillips and Simon Gratz, then well knowing the unjust and fraudulent character of said agreement

and inadequacy of the consideration, did combine and confederate with others, their confederates, to defraud your orators and their brothers and sisters of their just interest in the estate of the said Joseph Simon. And your orators further show to your honors, that the said agreement was concealed from your orators and the other children of the said Bilah Cohen, and was first discovered by them on the thirteenth day of June, eighteen hundred and thirty-three, it having been produced on that day by Lyon J. Levy, one of the confederates, in an examination of the said Lyon J. Levy, as a witness before Michael W. Ash, esquire, an alderman of the city of Philadelphia, the said Lyon J. Levy having been subpœned for the purpose of having his deposition taken in a case then pending in the orphan's court of Lancaster county; that the first knowledge your orators, and as they verily believe any of the children of the said Bilah Cohen, had of an arrangement having been made between Simon Gratz and Leah Phillips, was obtained by one of their brothers, Joseph S. Cohen, who, on the twenty-third day of March, one thousand eight hundred and thirty-three, was informed by Benjamin Champneys, esq., who had been and was counsel for the estate of Joseph Simon, that he, the said Benjamin Champneys, had received from Leah Phillips a power or warrant of attorney to enter judgment for the plaintiffs in a suit then pending, and on the argument list of the court of common pleas of Lancaster county, between Gratz's administrators, plaintiffs, and Simon's executors, defendants, the copy of the record whereof is hereunto annexed, marked . That the said Benjamin Champneys refused to show the said power or warrant to the said Joseph S. Cohen; that on the morning of the twenty-fifth of March, eighteen hundred and thirty-three, the day fixed for hearing arguments in the said court of common pleas of Lancaster county, the said Joseph S. Cohen attended with his counsel, James Hopkins, esq., and Reah Frazer, esq., at the opening of the court, filed the affidavit, a copy whereof, marked I, is hereto annexed; and on motion of Mr. Hopkins the said court, after considerable resistance on the part of John R. Montgomery and William Morris, esquires, counsel of Simon Gratz, granted a rule to show cause why Sarah M. Cohen and others, children of the said Bell Cohen, and interested in the estate of the said Joseph Simon, should not be permitted to come in and take defence in the said action, as appears by the said rule, a copy whereof is hereto annexed, marked J, which said rule was duly served on the said Leah Phillips, surviving executrix.

Your orators further show to your honors, that in pursuance of the said fraudulent and secret agreement, dated the fifteenth day of February, one thousand eight hundred and thirty-three, entered into between the said Leah Phillips and Simon Gratz at the instance of the said John Moss, Lyon J. Levy, and others, their confederates, whom, when discovered, your orators pray may be made parties to this their bill, with apt and sufficient words to charge them; the said Leah Phillips, surviving executrix as aforesaid, afterwards delivered to the said Lyon J. Levy the books and papers belonging to the estate of the said Joseph Simon,

who permitted the said Simon Gratz to examine such papers, and take such as he chose; that the said Simon Gratz has admitted that he did take the papers contained in a list, a copy whereof, marked K, is hereunto annexed; and your orators verily believe, and expressly charge, that he did take the said papers in the list contained, and other valuable papers and documents belonging to the estate of the said Joseph Simon; that the indemnity, dated the twenty sixth of July, eighteen hundred and two, already mentioned, upon which the action of Simon's executors against Simon Gratz's administrators was brought, the record whereof is hereunto annexed, marked G, and the letter of Simon Gratz to Levy Phillips, dated the twenty-third of May, eighteen hundred and two, already mentioned, were among the papers in possession of the said Leah Phillips, and that the same are in the possession or power of, or have been concealed or destroyed by, the said Simon Gratz, Leah Phillips, or other of their confederates; that in the further pursuance of the said fraudulent and secret agreement the said Leah Phillips, surviving executrix of the said Joseph Simon, on the third day of April, one thousand eight hundred and thirty-three, after the application had been made to, and the rule granted by, the court of common pleas of Lancaster county, a copy whereof is hereto annexed, marked J, and after the said Simon Gratz and Leah Phillips knew and had notice of the said application and rule, in the presence of the said John Moss and Lyon J. Levy, did execute a deed for the nominal consideration of fifteen hundred dollars, conveying to Simon Gratz, his heirs and assigns, certain lands in Bedford, Union, and Columbia counties, in the State of Pennsylvania, belonging to the estate of the said Joseph Simon, and did therein and thereby assign to the said Simon Gratz all moneys, principal and interest, due and to grow due, on lands sold, or contracted to be sold, to any person, or persons, whatsoever, either by the said Joseph Simon in his lifetime, or by his executors since his decease, as by reference to the said deed, a copy whereof marked L is hereunto annexed, will more fully appear.

And your orators further allege, that the said lands so conveyed were of great value, exceeding the sum of fifteen thousand dollars, and that their value was well known to the said Simon Gratz; that large sums of money were then due to the said estate of Joseph Simon for lands sold in the lifetime of the said Joseph Simon, and by his executors after his death, but the exact amount your orators are not able to state, they not having the documents and papers in their possession; and that in pursuance of said fraudulent and secret agreement the said Leah Phillips executed a deed to Simon Gratz for certain real estate in Lancaster county aforesaid; that in further pursuance of the said fraudulent agreement between the said Simon Gratz and Leah Phillips, surviving executrix as aforesaid, they, or one of them, caused to be filed on the eighth day of April, eighteen hundred and thirty-three, in the circuit court of Lancaster, in the State of Pennsylvania, then holden before the honorable Chief Justice Gibson, a certain power or warrant of attorney, a copy whereof is hereto annexed, marked M; by which said power of

attorney authority was given to suffer a verdict to be taken for the defendants, and judgment thereon in their favor in a suit then pending in the said circuit court, wherein the executors of Simon were plaintiffs, and the administrators of Gratz defendants, and which suit was brought on the indemnity of twenty-sixth July, eighteen hundred and two, before referred to, the record of which suit is hereto annexed, marked G; and in further pursuance of the said secret and fraudulent agreement, the said Simon Gratz, conniving with the said Leah Phillips, convened the auditors on the account *render* in the supreme court of March term, 1811, the record whereof, marked E, is hereto annexed. And the said Leah Phillips, surviving executrix as aforesaid, did sign a paper purporting to be an account to be laid before the auditors, dated March the twenty-eighth, eighteen hundred and thirty-three, and witnessed by the said John Moss and Lyon J. Levy, and in the handwriting of John Purdon, esq., the counsel of Simon Gratz, a copy whereof, marked N, is hereto annexed, the said Leah Phillips well knowing that there was a just and true defence to the claim of the plaintiffs in the above case.

Your orators further show, that they and the other children of the said Bilah Cohen addressed a note, dated March twenty-ninth, eighteen hundred and thirty-three, a copy whereof is hereunto annexed, marked O, to Joseph Gratz and Jacob Gratz, administrators of Michael Gratz, deceased, and citizens of the Commonwealth of Pennsylvania, requesting them to state whether or not they were parties to the arrangement made between Simon Gratz and Leah Phillips, or whether it was made with their knowledge and consent; to which letter they have received no answer, and, as they verily believe, their brothers and sisters have not; they therefore charge the said Joseph Gratz and Jacob Gratz to be parties to the fraudulent agreement, made and entered into between the said Simon Gratz and Leah Phillips.

And the said Simon Gratz and Leah Phillips sometimes pretend that the said agreements, deeds, and warrants of attorney were fairly and bona fide made, and that the said Leah Phillips had full power and authority to make the same; whereas, your orators charge, that the same were fraudulently made, in order to deprive your orators and the other children of the said Bilah Cohen of their just rights; and the said Simon Gratz and Leah Phillips, and their confederates, sometimes pretend that they had not, nor have they possession of, the aforesaid papers and documents of the said estate of the said Joseph Simon, and that they have not concealed or destroyed them, or any of them; but your orators charge that they, or some of them, had and have possession of them, or have destroyed or concealed the same. And your orators expressly charge, that the said John Moss, Lyon J. Levy, Isaac Phillips, and Isaac B. Phillips, and also Joseph Gratz and Jacob Gratz, administrators of Michael Gratz, with their confederates, whom, when discovered, they pray may be made parties to this bill, with apt words to charge them, were aiding, and counselling, and abetting the said Simon Gratz and the said Leah Phillips, surviving executrix as aforesaid, in making, executing, and carrying into effect the said fraudulent agreements, war-

rants of attorney, deeds and acts heretofore stated, to the great injury of your orators and the other children of the said Bilah Cohen.

All which actings, doings, pretences, and refusals, are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises. In consideration whereof, and forasmuch as your orators can only have adequate relief in the premises in a court of equity, where matters of this nature are properly relievable and recognizable: To the end, therefore, that the said Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, and also Joseph Gratz and Jacob Gratz, administrators aforesaid, and their confederates when discovered, may upon their several and respective oaths, to the best of their several and respective knowledge, remembrance, information and belief, full, true, and direct answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here reported, and they and every one of them distinctly interrogated thereto, and more especially that the said confederates may in manner aforesaid answer the following interrogatories:

Whether the said Joseph Simon in his lifetime, and at the time of his death, was or was not seized and possessed of certain valuable real and personal estate, situate, lying, and being in the State of Pennsylvania; where situate, the quantity and value thereof?

Did not Joseph Simon make and execute the last will and testament and codicils thereto in this bill mentioned; does not exhibit A contain a true copy of the said last will and testament and codicils?

Were or were not Levy Phillips, Leah Phillips, and Bilah Cohen, executor and executrices of the last will and testament of the said Joseph Simon? Is not Leah Phillips, surviving executrix of the said estate?

Did or did not Joseph Simon, Levy Andrew Levy, David Franks, and William Trent, on or about the sixteenth day of May, seventeen hundred and sixty, enter into articles of copartnership? Where are those articles; in whose possession or power are they? Annex a true copy to your answer.

Did or did not William Trent, on or about the fourth of January, seventeen hundred and sixty-nine, execute a bond to David Franks and Joseph Simon, conditioned for the payment of the sum of four thousand and eighty-two pounds on the fourth of day January, seventeen hundred and seventy, with interest from date? And did not the said William Trent execute a mortgage on the twenty-eighth day of February, one thousand seven hundred and sixty-nine, to secure the payment of the sum mentioned in the said bond? In whose possession or power are the said bond and mortgage? Annex a true copy of the same to your answer.

Were or were not David Franks and Joseph Simon jointly and equally interested in the said bond and mortgage?

Did or did not David Franks, on or about the eighteenth day of May, seventeen hundred and ninety, assign his interest in the said bond and mortgage to Michael Gratz, and to Bernard and Michael Gratz, and

draw an order on the said Joseph Simon for his, David Franks', half share of Trents' bond and mortgage, and was not said order accepted by the said Joseph Simon, on the twenty-second day of May, seventeen hundred and ninety? Where and in whose possession are the said assignment and order? Annex a true copy thereof to your answer.

Did or did not Joseph Simon, on the second day of August, seventeen hundred and ninety, execute a declaration of trust to Michael Gratz as stated in this bill? Where is the same, and in whose possession? Annex a copy thereof to your answer.

Was or was not there a deed quadrupartite, dated the twentieth of March, seventeen hundred and eighty-six, executed between David Franks of the first part, Amos Hayton of the second part, the trustees of Amos Hayton of the third part, and Tench Coxe and Isaac Hazlehurst of the fourth part; and is not the exhibit marked B a true copy of the same?

Was or was not there a deed executed on the fifteenth day of May, seventeen hundred and ninety-three, between George Davis of the first part, Tench Coxe and Isaac Hazlehurst of the second part, and George Davis of the third part. Is not the exhibit marked C a true copy of the same?

Did or did not Levy Phillips, as the authorized agent for Joseph Simon, write to Simon Gratz who was authorized to, and transacted business and attended to the concerns of Michael Gratz, on or about the twentieth of May, eighteen hundred and two, informing him of a claim on the part of Thomas Billington for the interest of David Franks, the said Billington deriving title under the aforementioned deeds of twentieth March, seventeen hundred and eighty-six, and fifteenth May, seventeen hundred and ninety-three? Annex to your answer a true copy of said letter.

Did not Simon Gratz for Michael Gratz, on the twenty-third day of May, one thousand eight hundred and two, write a letter to the said Levy Phillips in reply to the one stated in the preceding interrogatory? Annex the original, or a true copy of the same, to your answer.

Did not Simon Gratz, as attorney for Michael Gratz, on the twenty-sixth day of July, one thousand eight hundred and two, execute an instrument under seal, by which he indemnified Joseph Simon from all claim of the said Thomas Billington, Tench Cox, or George Davis and Isaac Hazlehurst, by virtue of the said assignment, dated the twentieth of March, seventeen hundred and eighty-six, and fifteenth of May, seventeen hundred and ninety-three? Annex the original, if in your possession or power, or a true copy of the same, to your answer.

Did not Simon Gratz, on the twenty-fourth day of July, one thousand eight hundred and six, obtain from George Davis an assignment of all the interest of the said George Davis, under the said deeds of twentieth March, seventeen hundred and eighty-six, and fifteenth May, seventeen hundred and ninety-three, and did he not, on the twenty-ninth of December, eighteen hundred and six, assign the same to Michael Gratz? Annex copies of the same to your answer.

Did not Michael Gratz institute an action of account *rendr* in the court of common pleas to March term, 1807, of the said court, which was removed by habeas corpus to the supreme court, and so proceeded in, that a judgment was obtained in favor of said Gratz for the sum of twelve thousand one hundred and sixty-nine dollars; is not exhibit marked D a true copy of the record in the case?

Did or did not Levy Phillips, one of the executors of Joseph Simon, die on or about the fifteenth day of January, one thousand eight hundred and thirty-two?

Did or did not Bilah Cohen, an executrix of the estate of Joseph Simon, depart this life on or about the twenty-ninth day of January, one thousand eight hundred and thirty-three?

Are or are not the complainants, Samuel M. Cohen and Eleazar L. Cohen, and also Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, the children of the said Bilah Cohen, and the persons mentioned and intended in the will of the said Joseph Simon?

At the death of Bilah Cohen, were there not pending the following actions: an action of account *render* in the supreme court of the eastern district of Pennsylvania to March term, 1811, of the said court, in which the administrators of Michael Gratz were plaintiffs, and the executors of Joseph Simon defendants; an action on the case in the court of common pleas of Lancaster county to August term, 1822, of said court, between the same plaintiffs and defendants; and an action in the circuit court of Lancaster county, wherein the executors of Joseph Simon were plaintiffs, and the administrators of Michael Gratz defendants; was not the last action founded on the instrument of indemnity of the twenty-sixth of July, eighteen hundred and two; and are not exhibits E, F, G, true copies of the records in the above cases?

After the decease of Levy Phillips, and during the lifetime of Bilah Cohen, were there any, and what, negotiations pending between Simon Gratz and Leah Phillips in relation to the estate of Joseph Simon; what was the nature and character of those negotiations, were they verbal or in writing; if in writing, annex copies of all papers that passed between the said Leah Phillips and Simon Gratz to your answer; if verbal, when, where, and what conversations took place, what propositions were made, and what agreement, verbal or in writing, entered into? State particularly the names of all the persons who took part in the same, and all the circumstances relating to them, and annex copies of any agreements in writing. Were not those negotiations and transactions concealed from Mrs. Bilah Cohen and her children?

Did or did not Simon Gratz call on Mrs. Leah Phillips at her house in Arch street, on or about the thirty-first day of October, or first day of November, eighteen hundred and thirty-two; was that call made in consequence of any previous notice; was that notice in writing? If aye, annex a copy of your answer. What was the object of that call; was Elkalah M. Cohen, one of the children of Bilah Cohen, at Mrs. Leah Phillips' when Simon Gratz called; did Simon Gratz then disclose the

object of his call; did he not leave the house without stating the object of his call; did he not state to Mrs. Phillips that he was not aware Mrs. Phillips resided there; had he not before called on her at that house; from whom did he receive information where she resided?

Was not Mrs. Bilah Cohen of an advanced age, and in very bad health during the year eighteen hundred and thirty-two, and was it not supposed that she would not long survive?

Were or were there not any subsequent interview or interviews between Mrs. Leah Phillips and Simon Gratz before the death of Mrs. Bilah Cohen; were they, or any of them, held in consequence of appointments previously made; were any of those appointments made in writing? If yea, annex copies of them to your answer. Where did those interviews take place?

Were there any, and how many, interviews between Leah Phillips and Simon Gratz at the counting house of Simon Gratz; what was the object of Leah Phillips and Simon Gratz meeting at his counting house, and not at the house of Leah Phillips; was it to prevent meeting any of the children of Mrs. Bilah Cohen; what took place at those interviews? State particularly.

Did or did not Leah Phillips state to Elkalah M. Cohen immediately after Simon Gratz had called on her as above stated, on the thirty-first of October or first of November, that she had no idea of seeing Simon Gratz, and was as much surprised at his calling on her as Miss Cohen possibly could be.

Did or did not John Moss, during the year eighteen hundred and thirty-two, when Elkalah M. Cohen was at Mrs. Phillips', call on her in relation to the pending negotiations between Simon Gratz and Leah Phillips, and call out Mrs. Phillips, and have private conversations with Mrs. Phillips on the subject? State what passed at that interview.

How soon after the death of Mrs. Bilah Cohen was the first interview between Simon Gratz and Leah Phillips; what passed at that interview; were any papers drawn up or signed? If yea, annex copies of the same to your answer.

By whom was the agreement dated fifteenth February, eighteen hundred and thirty-three, a copy of which is hereto annexed, marked H, drawn; is that exhibit a true copy of the same; when was it drawn; who were present; by whom was the amount fixed; was the consideration money therein mentioned paid to Mrs. Leah Phillips; when and by whom? State every particular in relation to it.

Was there any other consideration for that agreement than the one mentioned? State the same particularly, and where it was agreed upon.

Have or have not Simon Gratz, or the administrators of Michael Gratz, or any of them, paid to Mrs. Leah Phillips any sum or sums of money since the date of that agreement, or given to her any valuable consideration? State the amount and value of the same, by whom given, and at what times.

By whom were the warrants of attorney in relation to the suits pend-

ing between the executors of Joseph Simon and the administrators of Michael Gratz drawn; is not the exhibit marked M a true copy of the power or warrant of attorney, dated March the eighteenth, eighteen hundred and thirty-three?

Is not exhibit N a true copy of a paper signed by Leah Phillips, and intended to be exhibited to the auditors in the account *render* in the supreme court of March term, 1811; by whom was it drawn?

Was or was not John Purdon, esq., who drew the power of attorney, and the original of the exhibit marked N, the counsel of Simon Gratz, and employed by him in relation to the negotiations between him and Leah Phillips?

Did Mrs. Leah Phillips ever consult, or in any way instruct, John Purdon, esqr., in relation to the papers drawn by him, or on any other subject?

Is or is not exhibit J a true copy of the rule of the court of common pleas, of Lancaster county, served on Leah Phillips; was or was it not served on her before she executed the deed dated April the third, eighteen hundred and thirty-three, the copy of which is hereto annexed marked L; is not that exhibit a true copy of the said deed?

By whom was said deed drawn; was not application made to Frederick Beates, esq., to draw the same; did he refuse, and why; what reason did he assign for so doing?

Did or did not Simon Gratz know of the above mentioned rule of court, a copy of which, marked J, is hereto annexed, before the execution of said deed of third of April, eighteen hundred and thirty-three?

Was not the agreement of the fifteenth of February, eighteen hundred and thirty-three, a copy whereof is hereto annexed, marked H, concealed from the knowledge of the children of Bilah Cohen, until the examination of Lyon J. Levy before Michael W. Ash, esqr., as stated in this bill on the thirteenth day of June, one thousand eight hundred and thirty-three?

Was or was not Simon Gratz present at an argument before the circuit court of Lancaster county, on the eighth day of April, eighteen hundred and thirty-three, when an application was made for the continuance of the cause then pending, notwithstanding the power of attorney marked ?

Did not his counsel, John R. Montgomery, esqr., and William Morris, esq., oppose the continuance; and did Simon Gratz, or his counsel, then state to the court that the agreement dated the fifteenth of February, eighteen hundred and thirty-three, had been made?

Did they not conceal the existence of the same?

When, where, and why did Simon Gratz, or his attorney, after the death of Mrs. Bilah Cohen, call the auditors together in the action of account *render* in the supreme court of March term, 1811?

Did or did not Simon Gratz, before the said auditors were called together, state to Matthew L. Bevan, esqr., one of the said auditors, that they would be called together merely for form, as he had made an agreement with the surviving executrix in relation to the said suit?

Did or did not Simon Gratz know the value of the several tracts of

land mentioned and conveyed in the deed of third April, eighteen hundred and thirty-three? State particularly the value of each tract.

Was there any correspondence between Ner Middleswarth, or any other person, and Simon Gratz or Leah Phillips, or their or either of their attorneys, in relation to the lands conveyed, or the agreements of the fifteenth of February, eighteen hundred and thirty-three, before mentioned, between Simon Gratz and Leah Phillips? State the same particularly, and annex copies of the same.

Who sent the powers of attorney to Benjamin Champneys, esq.? Annex copies of the letters and correspondence between him or any of the parties hereto.

What disposition has been made of any of the tracts of land contained in the said deed of April the third, eighteen hundred and thirty-three, by the said Simon Gratz or his agents? State particularly what tracts have been sold, to whom, on what terms, what sums have been received, and what securities have been taken for the residue of the purchase money.

What sums have been received by Simon Gratz from Ner Middleswarth, Samuel Breek, or any other person or persons, for or by reason of said deed of April the third, eighteen hundred and thirty-three, or said agreement of fifteenth of February, eighteen hundred and thirty-three? Annex to your answer a particular account of the same.

Have any of the tracts mentioned in said deed been let to any person or persons? State particularly, and annex to your answer copies of all leases.

Was said deed and agreement exclusively for the benefit of Simon Gratz, or for the mutual benefit of Simon Gratz and the heirs, administrators, or representatives of Michael Gratz? State particularly, if the latter, in what proportion.

Has the estate of Michael Gratz received any and what benefit from the said agreement and deed?

What acts have you, or either of you, done in relation to the negotiation and agreement between Leah Phillips and Simon Gratz? State particularly your participation in reference to the same.

At the time of the agreement, and during the negotiations, had you any and what knowledge of the several suits pending between the executors of Joseph Simon and the administrators of Michael Gratz?

Were or were you not cognizant of the interest of the children of Bilah Cohen in the estate of Joseph Simon?

When, where, by whom, and for what purpose, were the papers of the estate of Joseph Simon in the possession of Leah Phillips placed in the hands of Lyon J. Levy?

What papers were placed in the hands of Lyon J. Levy; was there any list or schedule of the same made, and by whom? Annex to your answer the list or a copy of the list of the same, if made.

What papers were in the hands of Leah Phillips belonging to or relating to the estate of Joseph Simon?

What papers were taken by Simon Gratz? State them particularly.

Was there not a trunk of papers placed in the hands of Lyon J.

Levy? Describe particularly the trunk and its contents, and annex a list of the papers left by Simon Gratz in the said trunk. Where are the trunk and papers at this time? Were the papers left by Simon Gratz in that trunk afterwards removed therefrom?

When was the arrangement or agreement between Simon Gratz and Leah Phillips first communicated to the other administrators of Michael Gratz?

What has become of the letter of Simon Gratz to Levy Phillips, heretofore mentioned, dated the twenty-third day of July, eighteen hundred and two, and the deed of indemnity, dated twenty-sixth July, eighteen hundred and two?

Did you, or any of you, receive the letter dated March the twenty-ninth, eighteen hundred and thirty-three, a copy whereof is hereunto annexed, marked O? Is not the exhibit a true copy of the same? Have you replied to the same verbally or in writing? If there has been a reply in writing, annex to your answer a copy of the same; if there has been a verbal reply, state the substance thereof.

And that it may be declared that the said agreement made between the said Simon Gratz and the said Leah Phillips, dated the fifteenth day of February, one thousand eight hundred and thirty-three, a copy of which is hereto annexed, marked H, and the said warrants of attorney heretofore mentioned, and the said deed made and executed by the said Leah Phillips to the said Simon Gratz, dated the third day of April, one thousand eight hundred and thirty-three, a copy whereof is hereunto annexed, marked L, were, and are, severally fraudulent, void, and ought to be delivered up to be cancelled, and that the same may be delivered up accordingly; and that the said Simon Gratz be directed to state and file an account of all sum or sums of money and securities received by him or his agents, of and from any person or persons in any way or manner, under and by color of the said above mentioned agreement of the fifteenth day of February, eighteen hundred and thirty-three, and of the said above mentioned deed of the third day of April, eighteen hundred and thirty-three, and that your orators may have such further relief in the premises as to your honors shall seem meet.

And your orators further pray that the United States writs of subpœna may issue, directed to the said Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, and Jacob Gratz, and also to the said Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, all of whom are citizens of the Commonwealth of Pennsylvania, commanding them, at a certain day, and under a certain penalty therein to be mentioned, to be and appear before this honorable court, then and there to answer the premises, and to stand to and abide such order and decree therein as this honorable court shall deem agreeable to equity and good conscience; and your orators will ever pray.

T. KITTERA,
Solicitor for complainants.

A.

I, Joseph Simon, of the borough and county of Lancaster, in the State of Pennsylvania, merchant, do make, ordain, and declare my last will and testament in manner and form following:

1. Imprimis: I order and direct all my legal debts and funeral expenses to be paid by my executors as soon as conveniently may be done after my decease.

2. I constitute and appoint my son-in-law, Levi Phillips, my daughters Bilah and Leah, executor and executrices of my said will and testament.

3. Item: It is my will, and as soon as it may conveniently be done after my decease, I order and direct, that my executor and executrices, the survivors or survivor of them, shall sell and dispose of, either by public or private vendue or sale, as they shall think most advantageous, all my real and personal estate whatsoever and wheresoever, which shall not herein otherwise be directed or disposed of, and in such part or parcels as to them shall seem most advantageous and beneficial to my estate; and upon receipt of the purchase money or security for the same, they shall have power to make, execute, and acknowledge the proper grants and conveyances for the same to the purchasers or purchaser thereof; and in all cases where I may have sold or bargained, or may sell or bargain, for the sale of lands, tenements, and hereditaments, and shall not in my lifetime have executed any deeds or conveyances to such purchaser or bargainer, I order my said executor and executrices, the survivors or survivor of them, on receipt of the purchase money or the balances thereof, or on being fully satisfied that all the terms of sale are complied with, to make and execute the necessary deeds and conveyances for securing such premises to the purchaser or purchasers agreeably to the terms of sale or bargain. All which deeds shall be valid and effectual against my heirs, and all claiming under me and them.

4. I order and direct that the silver plate by me used or appropriated for the purpose of religious worship in my family, and the two rolls containing the five books of Moses, each shall immediately after the death of Levi Phillips (who shall have the use of them in the family for the same religious purposes during his life) be placed in the synagogue of the Jews, in the city of Philadelphia, for the use of the said synagogue, and those who worship God therein.

I release to the estate of my son-in-law, Solo. M. Cohen, all debts, dues, and demands due to me from the said estate, which I shall not sue for and recover during my life; no money or other property by me advanced to my daughter Bilah shall be charged to her.

6. I forgive, release, exonerate, and discharge my friend Levi Andrew Levy of and from all debts, duties, and demands due and owing to, or to become due and owing to, or payable from or by him to me; but not from any sum or sums which he may owe to me in the company of Simon & Etting, or their partnership debt.

7. And, as I am in this will about to take affectionate notice of my son-in-law Levi Phillips, I do declare that it is because I anxiously confide in him that he will faithfully take care of my sons Moses and Myer, and my daughter Hester, and be to them an upright guardian, and to treat them tenderly, and keep them to reside with him, and provide them in sufficient diet and drink, and in washing and lodging. And for the better support of my said three children, I order and direct my executors out of my personal property, before any inventory shall be taken, to take one bed and four blankets, which I give to my daughter Hester, and two beds and four blankets, which I give to Myer and Moses, viz., one bed and two blankets to each. And as a compensation for all trouble and care of them, and to clothe and maintain them, (whether by any of my own family or other persons, in case death or other accident should happen to my said son-in-law, Levi Phillips,) I do hereby constitute and set apart a fund of six thousand pounds specie, or such other sum as shall produce yearly the neat sum of three hundred and sixty pounds, to be applied equally for the support and maintenance and sufficient clothing of my said two sons and my daughter Hester.

8. And in order to raise and establish the said fund, I direct and order that my turnpike shares shall be taken and constitute part thereof; and also the proceeds of my personal estate, after payment of my debts, (household and kitchen furniture and plate excepted,) and my stock of merchandise on hand at my decease, shall be scheduled and appraised at prime cost, and at such appraisement may be taken by Levi Phillips on a credit of three, four, or five years, as he may choose, he to account for the amount of said appraisement, and to pay the interest quarterly, so as to meet the objects of the said fund. But no interest shall be paid or accoupted for for the first year of such term of credit. And the sum then deficient shall be taken out of the first moneys which shall arise out of the sales of my real estate or rents, as the case may be, (the property rented to be considered as a principal, and the rents as the interest;) so that the said fund producing the yearly sum of three hundred and sixty pounds, shall at all times be kept up. And upon the death of my said two sons and daughter Hester, or either of them, the yearly sum appropriated to such one or more so dying, that is to say, the proportionate part of the fund producing the same as the respective lives may fall, (except such legacies or payments as I shall direct to be paid or made thereout,) shall sink into my estate for the benefit of my residuary legatees.

9. Item. I give and bequeath to my daughter Shinah the sum of four hundred pounds, lawful money of Pennsylvania, to be paid to her out of the first moneys which shall come to the hands of my executor belonging to my estate, after the aforesaid fund shall be raised. But if there shall not be in, or shall come to their hands, a sufficient sum for that purpose, after raising the said fund, then my will is that it be made up out of the first moneys which shall be in their hands after death of either of my said sons or my daughter Hester, or other falling in of said fund, or any part thereof, whichsoever shall first happen. I also give

and bequeath to my said daughter Shinah my share and interest in the tract of country called Indiana; as also the right to two votes in the management and direction of the affairs of the Indiana Company, agreeably to a deed of settlement between myself and the rest of the owners of said tract, called Indiana, made and executed, together with all the rights to the said shares appurtenant, in fee simple. But if she should die without issue living at her death, I give and devise the same to Schuyler, her husband, his heirs and assigns, forever.

10. Item. It is my will that an inventory and conscionable appraisement be made immediately after my decease of all my household and kitchen furniture and plate, (the three beds and blankets before devised excepted,) and I bequeath the same in equal shares to my daughters Leah and Hester as joint tenants. But if my daughter Hester should marry, they shall be separated, and each take their equal share as tenants in common, for the purpose of which equal division the appraisement thereof shall be filed in the register's office along with the inventory of my other personal estate.

11. The house and stables which I at present use, and are now occupied by me, (including the stable in the alley,) and also the lower lot next the run, being one of the lots in the borough which I occupy as a garden, I value at the sum of nine hundred pounds, lawful money of Pennsylvania. The building occupied as a store by Simon and Phillips, with its appurtenances, I value at the sum of six hundred pounds like money. And my five acre out-lot adjoining Adam Weaver and William Bausman, with the buildings thereon and the appurtenances, I value at the sum of four hundred pounds like money. All which described property I devise in fee simple to my son-in law, Levi Phillips, subject to the payment of the said valuation, which I hereby charge on the said property respectively. But if my said son-in-law should not on my decease accept of the said property on such terms, then the same, or such part as he shall refuse, shall be sold as directed as part of my real estate. And he shall accept or refuse at the time of taking and filing the inventory, and make his election by inventorying the said prices as part of the moneys of my estate, as to such part as he shall accept, and omitting it as to such part as he shall refuse, which evidence of his election shall be final and conclusive.

12. All other my productive real estate, or any part which Levi Phillips may refuse (if he shall refuse any) in case from the troubled and unsettled times we are likely to experience, (which may God avert,) they cannot be sold with advantage to my estate, shall be rented out, and the rents thereof shall be applied in the first instance in aid of the fund before mentioned. And if from such untoward circumstances or other accidents arising to prevent it, no advantageous sale shall be made until there shall be no survivor among my executor or executrices, then it is my will that the administrator de bonis non of my estate shall have the same power, upon the same principles as my executors, to sell and convey my real estate for the purposes and trusts herein directed.

13. And whereas my estate at the southwest corner of the public square of the borough of Lancaster is charged with a yearly ground rent of nineteen pounds sterling, it is my will that the same shall be apportioned as follows, and in case of sales, there shall be a stipulation annexed to the parts respectively—that devised to Levi Phillips is hereby charged by this my will with the proportion annexed to it, that is to say, my dwelling-house, and the ground used and occupied with it, shall be charged with, and pay the yearly sum of, seven pounds sterling forever. The house in the tenure of Mr. Barton, esq., shall be charged with, and pay the sum of, seven pounds sterling yearly forever; and the messuages now occupied by Peter Getz, Egbert Taylor, and John Ross, esq., and the ground used and occupied by them, shall be charged with, and pay the sum of, five pounds sterling yearly per annum.

14. It is my will, also, that if my daughter Hester should marry, her yearly maintenance, that is to say, the proportionate part of the fund producing it, shall sink into the residue, and she shall be entitled to an equal share of the residue of my estate with my daughters Miriam, Bilah, and Leah, but not otherwise. But if she remain single, as she is otherwise provided for, it is my will, and I order and direct, that the whole residue of my estate, which in either event shall be vested in such stock or funds, producing six per cent. or more interest, as my executors shall think most safe, shall be divided into three equal shares, and one part of the proceeds thereof, that is to say, the interest, shall be paid to my daughter Miriam, during her life; one-third part of the proceeds or interest thereof to my son-in-law, Levy Phillips and Leah, his wife, during their lives, and the life of the survivor of them; and the remaining third part thereof to my daughter Bilah during her life, that is to say, the nett proceeds or interest thereof, the principal sum so vested in stock as aforesaid to remain undiminished. And after the death of any of my daughters (whether in case of Hester's marriage, the residue be divided into four shares, or in case of her remaining single, into three shares only,) her share of such residue, that is to say, the share of the principal stock producing it, shall vest in her issue, to take as purchasers, as tenants in common, share and share alike. But if either of my said daughters should die, not having issue living at the time of her death, then such share shall be equally divided among the children of my daughter Bilah, share and share alike, as tenants in common; if Hester marries, the residue shall be divided into four equal shares, and the interest of one-fourth part shall be paid to her yearly, and one-fourth only to each of my other daughters, Hester to take only a life estate, and on her death a fourth part of the principal shall vest in her children; but in case she shall have no child living at her death, then the said share shall be equally divided among the children of my daughter Bilah.

15. And to prevent all doubts and misconstruction, I declare my intention to be, that my sons Moses and Myer, and my daughter Shinah, are not to derive any further or other benefit from my estate than I have expressly provided for them; and to prevent any further succession to

them, or to children of Solomon Etting, I have parted with all my estate as herein set forth, meaning to die intestate as to no part of it.

16. And whereas I have received many hardships from my son-in-law Gratz and his sons, and in the settlement of our accounts they have taken an unfair advantage of me, by reason whereof they have, in an indirect way, received a full proportion of my estate, if not more, and particularly in an award against me for about one thousand and twenty-five pounds and ten shillings, of which I have paid them about five hundred and sixty-six pounds twelve shillings and nine pence, none of which I ought in any conscience to have paid; in order, therefore, that too great injustice shall not be done to the rest of my children, I do hereby declare, that I have devised to my daughter Miriam, and after her death to her children, the third part of the residue of estate, or, in a certain event, a fourth part of such residue, upon this express condition, that within three months after my decease, by writing tender to my executors, the residue of the money so awarded, and all claims respecting it be duly released to my executors, so that the same shall not come as a charge or debt against my estate, I being content to lose what I have already paid. But if the same shall not be so released, or if I shall be compelled, or in any manner troubled in my lifetime to pay the balance of such award, and pay the same, or any part thereof, then it is my will, and I do hereby revoke and make void the said devise to my daughter Miriam, so that neither she nor her children shall derive any benefit from any devise of the residue to her; and in such case I do hereby order and direct, that my daughter Bilah shall take one-half part of said residue, that is to say, the interest thereof, and the principal to her children after her death, or in case of Hester's marriage, one-third only in same manner; and the remaining one-half, or in case of Hester's marriage, one-third of the interest to Levi Phillips and Leah, his wife, during their joint lives, and the life of the survivor; and in case of their dying, leaving no issue at the death of the survivor, then that share to be equally divided between the children of my daughter Bilah; and if Hester marry, she shall have one-third part, viz., the interest thereof, and after her death, her children shall have the principal; but if she shall die leaving no issue at the time of her death, then her share shall be equally divided among the children of my daughter Bilah. And in lieu of the said devise of a part of the residue to my said daughter Miriam, I order my executors, the survivors or survivor of them, in six months after my decease, to pay to my said daughter Miriam one hundred pounds specie, and her separate receipt shall be a sufficient voucher to them; hereby revoking all other bequests to her or her children, at the same time declaring that I do so from a sense of justice, having no dislike to her personally, still retaining all my love and affection to my dear daughter Miriam. But if she refuse to accept the said one hundred pounds, then it shall sink into the residue of my estate.

17. And I further order, that if any one of my family, who by my will, or in any event of death or otherwise, shall become entitled to any part of my estate, shall bring any groundless action against, and to vex

or disturb my executors, the expenses they shall be put to, by counsel fees or otherwise, shall be deducted out of any share coming to him, her, or them so suing.

18. And I do hereby revoke all other wills and testaments by me heretofore made, and declare this, and this only, to be my last will and testament.

Witness my hand and seal, this twenty-sixth day of October, in the year one thousand seven hundred and ninety-nine.

JOS. SIMON. [L. S.]

Signed, sealed, published, and declared by Joseph Simon as and for his last will and testament, in the presence of us, who at his request have signed our names as witnesses thereto in presence of each other:

CHRISTIAN TRISSLER,
CHARLES SMITH.

This twenty-third day of December, 1802, I, Joseph Simon, make this my codicil to my last will and testament, hereby confirming my said will in all things not hereby altered—that is to say, having paid the residue of the money awarded to my son-in-law Gratz, the devise to my daughter Miriam of course fails, except the legacy of one hundred pounds, agreeably to the condition annexed to the devise to her, and neither she nor her children shall be entitled to any more of my estate than the said one hundred pounds.

Secondly. My daughter Leah shall have the absolute disposal of her share of the residue of my estate, and not of the interest only; but the legacies to Bilah and Hester to remain as they are, subject to the conditions and limitations in my said will.

Thirdly. I devise to Levy Andrew Levy five hundred dollars, payable as soon as it can be raised after the legacy is paid to my daughter Shinah.

Fourthly. Levi Phillips shall be at liberty to take the goods and furniture of my store at twenty per. cent under cost.

Fifthly. By the synagogue of the Jews, I mean the old synagogue in the city of Philadelphia, Mickva Israel.

Sixthly. I bequeath my five shares in the Lancaster and Philadelphia turnpike, and one share in the Lancaster and Susquehanna turnpike, to my grand-children, Abraham and Joseph Cohen—that is to say, the dividends thereof to be applied to their maintenance until they shall respectively come of age, and then to receive the dividends to their own use during their lives; or if one of them should die, the survivor shall take the whole during his life, provided he shall leave no issue at his death; and if both die without issue at their death, then the said turnpike shares shall be equally divided among their brothers who may survive.

Seventhly. I value the house M. Barton lives in, and the lot, at six hundred pounds, and devise the same to Levi Phillips in fee, if he will accept it at that sum, in the same way, and under the same conditions as the other house and store are devised to him, and if he will not ac-

cept, the same to be sold, in like manner; and also the house at the corner, described as in possession of Ross, Taylor and Getz, I value at five hundred pounds, and devise the same to Levi Phillips in fee, on the same terms as the other houses, if he will accept them at that price; if not, to be sold as directed in the will.

JOSEPH SIMON. [SEAL.]

Signed, sealed, published, and declared by Joseph Simon, as the codicil to his last will and testament, in our presence, and in the presence of each other, and we have witnessed the same at his request:

CHRISTIAN TRISSLER,
CHARLES SMITH.

Whereas my son-in-law, Levi Phillips, has continually informed me that when I had made the last codicil in my last will and testament, I ought also at the same time have made the alteration by giving my daughter Bilah her share in the principal, instead of the interest of the principal of my residue, which would make her more comfortable, therefore, I do, by this instrument of writing, authorize and give full power to my son-in-law Levi Phillips, as being one of my executors and guardian of my last will and testament, to do as he thinks requisite to say, by giving my said daughter Bilah her share of my residue in the principal, as the money comes to hand. In witness whereof, I, Joseph Simon, have this day set my hand and seal.

JOSEPH SIMON.

Lancaster, February the ninth, 1803.

B.

This indenture quadrupartite, made the twentieth day of March, in twenty-sixth year of the reign of our sovereign Lord George the Third, by the grace of God king of Great Britain, France, and Ireland, defender of the faith, and so forth, and in the year of our Lord one thousand seven hundred and eighty-six, between David Franks, late of Philadelphia, in the province of Pennsylvania, North America, but now of Isleworth, in the county of Middlesex, merchant, of the first part; Amos Hayton, of Mark lane, in the city of London, merchant, of the second part; Richard Harris, of Bow Church yard, in the city of London, linen draper, John Tate, of Bucklersbury, in the same city, warehouseman, John Watson, of Mining lane, in the same city, merchant, George Naime, of Bucklersbury, aforesaid, warehouseman, and Arthur Edie, of Yokenhouse yard, in the same city, merchant, trustees of the said Amos Hayton, of the third part; and Tench Coxe and Isaac Hazlehurst, of Philadelphia aforesaid, merchants, of the fourth part. Whereas the said Amos Hayton, having some time since become indebted to divers persons in divers large sums of money, to a considerable amount in the whole, which at that time he was unable to pay and discharge, being *unwilling* to make all the satisfaction in his power to his several creditors, he, the said Amos Hayton, by indenture tripartite, bearing date the thirteenth day of September, in the year of our Lord one thousand

seven hundred and eighty-four, and made between the said Amos Hayton, of the first part; the said Richard Harris, John Tate, John Watson, George Naime, and Arthur Edie, of the second part; and the several other creditors of the said Amos Hayton, of the third part, did assign and transfer all his estate and effects to the said Richard Harris, John Tate, John Watson, George Naime, and Arthur Edie, in trust and for the equal benefit of them, and of all and singular other the creditors of the said Amos Hayton. And whereas the said David Franks is now seized and possessed of, or well entitled unto, considerable real and personal property in North America, consisting of divers estates, plantations, mills, houses, lands and tenements, situate in the State of Pennsylvania, and elsewhere in North America aforesaid, and also debts and effects to a large amount. And whereas, upon an account this day stated and settled between the said David Franks and the said Amos Hayton, there appears to be now due and owing from the said David Franks to the said Amos Hayton the sum of £1,815 11s. 4d., and no more; and whereas the said David Franks, being unable at present to pay and satisfy the said debt, but being willing and desirous to make the best provision he can for the payment thereof, hath applied to the said Amos Hayton, and the said Richard Harris, John Tate, John Watson, George Naime, and Arthur Edie, and proposed to them to grant, bargain, sell, assign, and convey, as well all his said estate and plantations, mills, houses, lands, and tenements in the State of Pennsylvania and elsewhere in North America aforesaid, as all his personal estate, debts, and effects in North America aforesaid, unto such person or persons as they shall nominate or appoint upon the trusts hereinafter mentioned, expressed, and declared, of [and] concerning the same, which proposal they, the said Amos Hayton, and the said Richard Harris, John Tate, John Watson, George Naime, and Arthur Edie have agreed to accept:

Now, this indenture witnesseth, that in pursuance of the said agreement, and for and in consideration of the sum of ten shillings, lawful money of Great Britain, by the said Amos Hayton to the said David Franks in hand well and truly paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for divers other good causes and considerations him thereunto moving, he, the said David Franks, (upon the nomination and appointment, and by the direction of the said Amos Hayton, Richard Harris, John Tate, John Watson, George Naime, and Arthur Edie, testified by their being made parties to, and by their sealing and delivering of these presents,) hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said Tench Coxe and Isaac Hazlehurst, all that water snuff mill and premises, and all the other appurtenances thereunto belonging, late the inheritance of Jonathan Adams, and lately purchased from him by the said David Franks, and also all that small messuage or dwelling-house, together with the lands thereunto belonging, and therewith usually occupied and enjoyed,

adjoining to the said mill, containing in the whole, by common estimation, three acres of land of the measure there used or thereabouts, be the same more or less. All which said premises are situate, standing, and lying and being in the township of , in the county of Philadelphia, in the State of Pennsylvania, about five miles from Philadelphia, on the Wysahickon road, and also all those messuages or dwelling-houses, situate, standing, or being in Philadelphia aforesaid, and in a certain place then called Norris' Alley, adjoining to houses now or late the estate of Dr. Thomas Bond, together with their and every of their appurtenances. And also all that other water snuff mill and tenement, together with the lands and premises thereunto belonging, or therewith usually occupied and enjoyed, with their and every of their appurtenances, containing together in the whole, by common estimation, fifteen acres of land, of the measure there used, or thereabouts, be the same more or less; all which said last mentioned mill, lands, tenements, premises, are situate, standing, lying, or being in the county of Chester, in the said State of Pennsylvania, in North America, and on a certain creek there called Cobb's creek, near the town of Darby, about seven miles distant from Philadelphia aforesaid; and also all that plantation, lands, tenements, and premises, situate, lying, and being in Lancaster county, in the State of Pennsylvania, in North America aforesaid, and which were formerly the estate and inheritance of Simon Gutrie, of whom the said David Franks purchased the same; all which said last mentioned premises now or late were in the tenure and possession of one Panderleck; and also all that small messuage or dwelling-house, together with the small lot of ground thereunto belonging, or therewith usually occupied and enjoyed, situate, standing, lying, or being in the town of Lancaster, in the county of Lancaster, in the said State of Pennsylvania, in North America aforesaid; and also all that moiety or one-half part, the whole in two equal parts to be divided, of all that tract of unimproved land, commonly called or known by the name of Bullock's Penn, situate, lying, and being at , in the county of , in the State of Pennsylvania aforesaid, about nine miles east of Fort Pitt; all which said last mentioned tract of land is held in company with Joseph Simon, and contains in the whole, by common estimation, three hundred acres of land, of the measure there used, or thereabouts, be the same more or less; and also all his, the said David Franks' estate, share, and interest of and in all those several tracts of unimproved land situate, lying, and being in a certain creek called Juniata creek, in the county of Cumberland, in the State of Pennsylvania aforesaid, about midway between Bedford town and Carlisle town; all which said last mentioned tract of land is held by the said David Franks, in company with the said Joseph Simon, and contains in the whole, by estimation, acres, or thereabouts, be the same more or less.

And also all that tract of uncultivated or unimproved land, situate, lying, and being in Northumberland county, in the said State of Pennsylvania, in North America aforesaid, and on a certain creek there called Fishing creek, which said last mentioned tract of ground contains in

the whole, by common estimation, three hundred and thirty-two acres of land, or thereabouts, be the same more or less. And also all the part or share, right, interest and property, by which the said David Franks now hath, or hereafter shall or may have, of and in the Vandalia, Illinois, and Wabash claims, in a county now settling very fast, and called, or intended to be called county, together with all and singular the houses, out-houses, edifices, buildings, barns, stables, yards, orchards, gardens, lands, meadows, pastures, feedings, commons, common of pasture and turbury, woods, underwoods, and the ground and soil of the same, ways, waters, water-courses, paths, passages, liberties, easements, privileges, profits, commodities, hereditaments and appurtenances whatsoever to the said several messuages or dwelling-houses, mills, lands, tenements, hereditaments and premises, or any of them, or any part or parcel thereof, belonging or in any wise appertaining, or therewith or with any part thereof now or at any time heretofore used, occupied, or enjoyed, or accepted, reputed, taken, or known to be part, parcel, or member thereof, or any part thereof, and the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits thereof or thereunto incident, belonging, or in anywise appertaining, and all the estate, right, title, interest, use, trust, possession, property, claim, or demand, whatsoever, both at law and in equity, of him, the said David Franks, his heirs and assigns, of, in, unto, or out of the same, and every part therof, with their and every of their appurtenances, and all deeds, evidences, muniments and writings in the hands, possession, custody, or power of him, the said David Franks, or which he can come at without suit at law or in equity relating to, or in anywise touching or concerning the same premises, or any part or parcel thereof. To have and to hold the said several messuages or dwelling-houses, mills, lands, tenements, hereditaments and premises, herein before mentioned or intended to be hereby granted, bargained, sold, and released, and every part and parcel thereof, with their and every of their appurtenances, unto the said Tench Coxe and Isaac Hazlehurst, to their heirs and assigns, to the only proper use and behoof of them, the said Tench Coxe and Isaac Hazlehurst, their heirs and assigns, forever; upon the trusts, nevertheless, to and for the several uses, interests, and purposes, and under and subject to the several provisions, limitations, and agreements hereinafter mentioned, expressed and declared, of and concerning the same. And this indenture further witnesseth, that for the consideration aforesaid he, the said David Franks, upon the nomination and appointment and by the direction of the said Amos Hayton, Richard Harris, John Tate, John Watson, George Naime, and Arthur Edie, testified as aforesaid, hath bargained, sold, assigned, transferred, and set over, and by these presents doth bargain, sell, assign, transfer, and set over, unto the said Tench Coxe and Isaac Hazlehurst, their executors, administrators, and assigns, all the personal estate and effects of the said David Franks, in North America aforesaid, and also all debts and sums of money due and owing from any person or persons in America aforesaid, to him, the said David Franks. To have and to hold the said personal estate, debts, and effects herein before mentioned,

or intended to be hereby bargained, sold, and assigned, unto the said Tench Coxe and Isaac Hazlehurst, the executors, administrators, and assigns, to the proper use and behoof of the said Tench Coxe and Isaac Hazlehurst, their executors, administrators and assigns, forever. Upon the trusts, nevertheless, and to and for the several uses, intents, and purposes hereinafter mentioned, expressed, and declared, of and concerning the same, that is to say, upon trust that they, the said Tench Coxe and Isaac Hazlehurst, or the survivor of them, or the executors or administrators of such survivor, as, to, for, and concerning the goods, chattels, and effects herein before assigned and set over, shall and do, at their own discretion, with all convenient speed, make sale, and absolutely dispose of the same, either together or in parcels, for the best price or prices, or for the most money that can or may be reasonably had or gotten for the same; and to collect, get in, and receive the said debts and sums of money now due, or hereafter to grow or become due, to the said David Franks, from any person or persons whomsoever, residing in North America aforesaid, and out of the moneys so arising from the sale of such personal effects, and from the reception of such debts as aforesaid, so as to be received by them, the said Tench Coxe and Isaac Hazlehurst, or the survivor or the executors or administrators of such survivor, in the first place to deduct and retain to themselves such costs, charges and expenses, as they, or either of them, shall have paid, borne, or expended, by reason of these presents, or the execution of the trusts hereby in them placed and reposed; and after the payment of the said costs, charges and expenses, then, upon this further trust, out of the said fund or trust moneys then in the hands of the said Tench Coxe and Isaac Hazlehurst, or the survivor of them, or the executors and administrators of such survivor, to pay unto the said Richard Harris, John Tate, John Watson, George Naime, and Arthur Edie, or the survivors or survivor of them, or the executors or administrators of such survivor, the said principal sum of one thousand eight hundred and fifteen pounds eleven shillings and four pence, so due and owing from the said David Franks to the said Amos Hayton aforesaid, and all interest money which shall then have accrued, or have become due for the same; and in case there shall be any surplus of the said trust moneys after such payments and deductions as aforesaid, then upon trust to pay the same to the said David Franks, his executors, administrators, or assigns.

But in case the said fund or trust money so raised by the sale of such personal property, or by the reception of such debts as aforesaid, shall be found insufficient or inadequate to the discharge of such costs, charges, and expenses, and of the said principal sum of one thousand eight hundred and fifteen pounds eleven shillings and four pence, so due and owing as aforesaid, and the interest which shall be then due thereon, then upon trust that they, the said Tench Coxe and Isaac Hazlehurst, or the survivor of them, and his heirs, as, to, for, and concerning the said several messuages or dwelling-houses, mills, lands, tenements, hereditaments, and premises hereinafter mentioned to be hereby granted and released as aforesaid, with their appurtenances, shall and do, at their own discretion, make sale and dispose of the same, and the fee

simple and equity of redemption thereof, either together or in parcels, any part or parcels thereof, for the most money and for the best price and prices that can be reasonably had or gotten for the same; and it is hereby declared and agreed to be the true intent and meaning of these presents, that they, the said Tench Coxe and Isaac Hazlehurst, or the survivor of them, or the heirs, executors, or administrators of such survivor, as shall pay and apply all and any such sum and sums of money which shall be raised by any such sale or sales, after all costs and charges and expenses relating thereto, or to the trusts hereby in them placed and reposed, shall be deducted thereout, and which they are hereby authorized to deduct and to retain, in the first place to the discharge of the said principal sum of one thousand eight hundred and fifteen pounds eleven shillings and four pence, and the interest thereof, or so much of the said principal sum and interest as may be then due and owing from the said David Franks to the said Amos Hayton; and after such payment to pay the surplus and residue of the money so raised by such sale or sales as aforesaid (if any such shall be) to such person and persons as he, the said David Franks, shall direct and appoint to receive the same from time to time, and for want of such direction and appointment to the said David Franks, his executors, administrators, and assigns; and upon the further trusts that they, the said Tench Coxe and Isaac Hazlehurst, or the survivor of them, or his heirs, shall, in the mean time, until such sale or sales respectively, pay and apply the rents and profits of the said premises mentioned and intended to be hereby granted, bargained, sold, or released, or of any part or parcel thereof remaining unsold, from time to time, as the same shall come to their hands, in and towards the discharge of the interest of the said principal sum of one thousand eight hundred and fifteen pounds eleven shillings and four pence, so due and owing to the said Amos Hayton as aforesaid; and in case such rents and profits are more than adequate to the payment of the said interest, then to pay and apply the overplus in discharge of the said principal sum of one thousand eight hundred and fifteen pounds eleven shillings and four pence, so as aforesaid due to the said Amos Hayton; and the residue of such rents and profits, if any there be, to pay to such person or persons as the said David Franks may direct and appoint, and in default of such direction and appointment to the said David Franks, his executors, administrators, or assigns: Provided always, and it is hereby declared and agreed upon, by and between the said parties to these presents, that in case at the expiration of twelve calendar months from the time these presents shall arrive at Philadelphia aforesaid, the said Tench Coxe and Isaac Hazlehurst, or the survivor of them, or the executors or administrators of such survivor shall not have received from the produce of the said personal estate, debts and effects, a sufficient sum of money for the payment and satisfaction for the said sum of one thousand eight hundred and fifteen pounds eleven shillings and four pence, and all interest then due and owing from the same, it shall and may be lawful to and for the said Tench Coxe and Isaac Hazlehurst, or the survivor of them, or his heirs,

or assigns of such survivor shall think proper, for the purpose of raising or paying such part of the said sum of one thousand eight hundred and fifteen pounds eleven shillings and four pence, and the interest thereof, as the produce of the said personal estate, debts, and effects shall fall short of paying and discharging: Provided also, and it is hereby further declared and agreed, by and beween the said parties hereto, that in case at any time or times previous to the expiration of the said twelve months, a bona fide shall be offered by any person or persons to the said Tench Coxe and Isaac Hazlehurst, or the survivor of them, or the heirs or assigns of such survivor, for the purchase of the whole or any part or parts of the said real estate and premises hereby bargained, sold, and released, it shall and may be lawful to and for the said Tench Coxe and Isaac Hazlehurst, or the survivor of them, or the heirs or assigns of such survivor, to sell and dispose of the same, or any part or parts thereof, and to pay and apply and dispose of the purchase money to arise therefrom in manner herein before mentioned: Provided always, and it is hereby agreed and declared, by and between the parties to these presents, to be the true intent and meaning of these presents and of the said parties, that if it shall appear from the fund or trust money raised as aforesaid from the sale of the personal effects, and from the reception of the drafts and moneys aforesaid, that it will not be necessary to proceed to the sale of the whole of the premises herein before mentioned to be hereby granted, bargained, sold, and released as aforesaid, that then and in that case the said Tench Coxe and Isaac Hazlehurst, or the survivor of them, or his heirs, shall proceed only to the sale of such part of the premises as he or they shall deem sufficient in value to make the said fund or trust money so raised as aforesaid sufficient for, and equal to, the discharge of the said one thousand eight hundred and fifteen pounds eleven shillings and four pence, due to the said Amos Hayton as aforesaid, and the interest which shall be then due and accrue thereon.

And it is further agreed and declared to be the true intent and meaning of these presents, that in case the whole or any part of the said premises hereinbefore mentioned to be hereby granted, bargained, sold, and released as aforesaid, shall remain unsold, the said principal sum of one thousand eight hundred and fifteen pounds eleven shillings and four pence, and all interest due thereon, being first paid, as aforesaid, together with all costs, expenses, and charges attending the execution of this trust as aforesaid, then the said Tench Coxe and Isaac Hazlehurst, and the survivor of them, and his heirs, shall and will, with all convenient speed, but at the cost and charges of the said David Franks, reconvey to him, the said David Franks, his heirs and assigns, all and every such part and parcel so remaining unsold as aforesaid, by any deed or deeds, writing or writings, as the said David Franks, his heirs or assigns, or his or their counsel, shall direct and approve. And it is also hereby agreed and declared, by and between the parties to these presents, to be the true intent and meaning of these presents, that they, the said Tench Coxe and Isaac Hazlehurst, or the survivor of them,

and the heirs, executors, and administrators of the survivor, do stand seized, possessed of, and interested in, the premises hereinbefore granted, bargained, sold, and released as aforesaid, only for the uses, intents, and purposes by these presents expressed and limited, and for no other use, intent, or purpose whatsoever. And also that the personal estate, so aforesaid assigned and set over to them merely for the uses, intents, and purposes by these presents expressed, and for no other use, intent, or purpose whatsoever, and for the purpose of the more speedily collecting, getting in, and receiving the said debts and sums of money, he, the said David Franks, hath made, ordained, nominated, constituted, and appointed, and by these presents doth make, ordain, nominate, constitute, and appoint, the said Tench Coxe and Isaac Hazlehurst, their executors, administrators, assigns, his true and lawful attorneys and attorney, in the name of him, the said David Franks, for the purposes aforesaid, to ask, demand, sue for, recover, and receive, of and from all and every person and persons whomsoever, residing in North America aforesaid, and debtors of him, the said David Franks, all and every such sum and sums of money, and to make, cast up, adjust, and finally settle, all and every account and accounts now depending between the said David Franks and every other person or persons whomsoever residing in North America aforesaid; and the balance and balances of such account and accounts, when liquidated and ascertained, to receive, compound, acquit, and discharge, and also to compound for all or any of the said debt or debts, and such composition to ask, demand, and receive; and upon receipt of the said debts, or any of them, or the said composition or compositions, for him, the said David Franks, and in his name, proper and sufficient receipts, acquittances, releases, and discharges, to make, sign, seal, give, and execute, and one or more action or actions, suit or suits, in the name of the said David Franks, to commence, and the same to proceed in according to law and the customs of any court or courts in all, any, or either of the United States of North America aforesaid, and one or more attorney or attorneys, agent or agents, under them, the said Tench Coxe and Isaac Hazlehurst, for the purposes aforesaid, to substitute and appoint, and the same again at pleasure to revoke; and generally to do and cause to be done all and every other acts, matters, and things whatsoever, requisite and proper to be done for obtaining, recovering, compounding, receiving, and discharging such debts, and every or any of them, as fully and effectually, to all intents and purposes, as he, the said David Franks, might or could do if personally present; he, the said David Franks, hereby allowing, ratifying, and confirming, and agreeing to allow, ratify, and confirm, all and whatever his said attorneys or either of them, shall lawfully do, or cause to be done, in the premises by virtue of these presents; and it is hereby declared and agreed, by and between the said parties to these presents, that the said Tench Coxe and Isaac Hazlehurst, their executors or administrators, shall not be answerable or accountable for any loss or damage that may happen to the said trust estate and premises, unless the same shall be occa-

sioned by their wilful neglect or default, or be answerable or accountable for any part of the trust moneys, save what they respectively shall actually have received; and that each of them shall be answerable or accountable for his own acts, receipts, neglects, or defaults only, and not one of them for the acts, receipts, neglects, and defaults of the other of them; and that the receipt or receipts of the said Tench Coxe and Isaac Hazlehurst, their heirs, executors, or administrators, shall be a full and absolute discharge for the purchase money of the said trust estate and premises, or any part thereof, to the several and respective purchases, and their several and respective heirs, executors, and assigns; and that such purchaser or purchasers shall not be obliged to see to the subsequent application thereof, or be answerable or accountable for any misapplication or nonapplication thereof; and the said David Franks, for himself, heirs, executors, and administrators, doth covenant, promise, and agree, to and with the said Tench Coxe and Isaac Hazlehurst, their executors, administrators, and assigns, and any of them, by these presents, in manner following, that is to say, that he, the said David Franks, his executors or administrators, shall not [now,] nor at any time hereafter, will, revoke, or make void all or any of the power or authorities by him given or granted in and by these presents, or disavow, discontinue, or become non suit in any action or suit which shall be brought or commenced by virtue of any of the powers or authorities by him given or granted in and by these presents; and further, that he, the said David Franks, hath not, at any time heretofore, made, done, or committed, or wittingly or willingly suffered to be done, any act or deed, matter or thing whatsoever, whereby, or by reason or means whereof, the said several messuages or dwelling-houses, mills, tenements, lands, hereditaments, and premises hereinbefore mentioned or intended to be hereby granted, released, and conveyed, or any of them, or any part or parcel thereof, are, is, can, shall, or may be in any ways impeached, charged, affected, or incumbered in estate, title, charge, or otherwise howsoever. And also that he, the said David Franks, his heirs and assigns, shall and will, upon reasonable request, join in such sale or sales as the said Tench Coxe and Isaac Hazlehurst, their heirs or assigns, shall make by virtue of these presents, and also in the several conveyances and purchase deeds to be made pursuant thereto, and give and enter into proper and reasonable covenants to the respective purchaser or purchasers thereof. And further, that the said David Franks, his heirs, and all and every other person or persons whomsoever, claiming, or to claim, by, from, under, or in trust for him, them, or any of them, shall and will, from time to time, and at all or any time or times hereafter, upon the reasonable request of the said Amos Hayton, Richard Harris, John Tate, John Watson, George Naime, Arthur Edie, Tench Coxe, and Isaac Hazlehurst, or any of them, their or any of their executors, administrators, or assigns, but at the proper costs and charges in the law of the said trust estate, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all and every such further and other

lawful and reasonable act and acts, deed and deeds, thing and things, devices, conveyances, assignments, and assurances in the law whatsoever, for the further, better, more perfect, and absolute granting, conveying, and assuring the said several messuages or dwelling-houses, mills, lands, tenements, hereditaments, premises, personal estate, and effects herein before mentioned, and intended to be hereby granted, released, bargained, sold, and assigned, and every part thereof, with their and every [of] their appurtenances, unto the said Tench Coxe and Isaac Hazlehurst, their heirs, executors, administrators, and assigns, upon the trusts herein before mentioned and expressed concerning the same, be the same by fine or fines, common recovery or common recoveries, feoffment, bargain, and sale, or other deed or deeds, enrolled or not enrolled, or otherwise howsoever, as by the said Amos Hayton, Richard Harris, John Tate, John Watson, George Naime, Arthur Edie, Tench Coxe, and Isaac Hazlehurst, or any of them, their or any of their heirs, executors, administrators, or assigns, of his, their, or any of their counsel learned in the law shall, in that behalf, be reasonably devised or advised and required, so as the said further assurances contain no further or other warranty or covenant than against the person or persons who shall be required to make and execute the same, and his, her, and their heirs, assigns, acts, and deeds only and so as the person or persons who shall be required to make and execute the same be not for the doing thereof compelled, or compellable, to go or travel from his or their most usual place of residence.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first above written.

DAVID FRANKS, [L. S.]
JOHN TATE. [L. S.]
ARTHUR EDIE, [L. S.]
AMOS HAYTON, [L. S.]
JOHN WATSON, [L. S.]
RICHARD HARRIS, [L. S.]
GEORGE NAIME. [L. S.]

Sealed and delivered by the within named Amos Hayton, John Watson, Richard Harris, John Tate, George Naime, and Arthur Edie, being first duly stamped, in the presence of James Newburn, J. L. Hodgson; sealed and delivered by the within named David Franks, (the parchment being first duly stamped) in the presence of John Warder, Will Chippendall, on the eighth day of February, one thousand eight hundred and eighty-seven.

Before me, Edward Shippen, esq., president of the court of common pleas, for the county of Philadelphia, comes David Franks, and acknowledges the within written indenture to be his act and deed, and desired that the same might be recorded as such. Witness my hand and seal.

EDWARD SHIPPEN. [SEAL.]

Recorded 21st February, 1787.

C.

This indenture tripartite, made the sixteenth day of May, in the year of our Lord one thousand seven hundred and ninety-three, between Isaac Hazlehurst and Tench Coxe, of the city of Philadelphia, and State of Pennsylvania, merchants, of the first part, David Franks, of the said city, merchant of the second part, and George Davis, of the said city, esquire, of the third part. Whereas the said David Franks, being indebted to Amos Hayton, of London in the kingdom of Great Britain, merchant, in the sum of one thousand eight hundred and fifteen pounds eleven shillings and four pence sterling, money of Great Britain, did, by indenture bearing date the twentieth day of March, one thousand seven hundred and eighty-six, for the consideration therein mentioned, grant, bargain, sell, assign, and set over, unto the said Isaac Hazlehurst and Tench Coxe, their heirs, executors, administrators, and assigns, for the use of the said Amos Hayton, divers messuages, tenements, lots, lands, hereditaments, and real estate, in the said indenture particularly mentioned, set forth, and described; also all the personal estate and effects of the said David Franks in North America, and also all debts and sums of money then due and owing from any person or persons in America aforesaid, to him, the said David Franks, as by the said indenture, relation thereunto had, among other matters and things may appear. And whereas the said David Franks is still willing and desirous, as far as in him lies, to satisfy the debt aforesaid, and the said Isaac Hazlehurst and Tench Coxe, together with the said David Franks, have contented and agreed to grant, bargain, sell, assign, and set over, unto the said George Davis, all and singular the estate real and personal of him, the said David Franks, for the purpose aforesaid. Now this indenture witnesseth, that the said Isaac Hazlehurst, Tench Coxe, and David Franks, in pursuance of the said agreement, and for and in consideration of the sum of ten shillings, current money of Pennsylvania, unto them in hand well and truly paid by the said George Davis, at and before the sealing and delivery hereof, the receipt whereof they do hereby acknowledge, have and each of them hath, and by these presents do, and each and every one of them doth, grant, bargain, sell, alien, enfeoff, release, assign, transfer, set over, and confirm, unto the said George Davis, his heirs, executors, administrators, and assigns, all and every the said messuages, tenements, lots, lands, hereditaments, and real estate whatsoever, of him, the said David Franks, wheresoever situate, lying, and being, by whatsoever name or names known or called, or by whatsoever metes and bounds described; also all and every the debt, sum and sums of money now due, owing, or payable unto him, the said David Franks, from or by any person or persons whomsoever, upon or by virtue of any bond, mortgage, bill, specialty, note, book debt, assumption, account, contract, trade, dealing, or otherwise howsoever; and also all the estate, right, title, interest, use, possession, property, claim, and demand whatsoever, of them or either of them, the said Isaac Hazlehurst, Tench Coxe, and David Franks, either in law or equity, or

otherwise howsoever, of, in, to, or out of, all and singular the premises and every part thereof.

To have and to hold, receive, take, and enjoy, all and singular the hereby granted, bargained, sold, and assigned premises, with their and every of their appurtenances, unto the said George Davis, his heirs and assigns, forever, to and for the several uses, intents and purposes, hereinafter mentioned, limited and declared, that is to say, upon special trust and confidence, nevertheless, and to the end, intent, and purpose that he, the said George Davis, his heirs, executors, and administrators, shall and do, with all convenient speed, grant, bargain, sell, convey, and absolutely dispose of, all and singular the premises aforesaid, either in the whole and entirely, or in part or parcels, by public sale or vendue, to the highest bidder or bidders, or by private sale or sales, for the best rate or prices that can or may reasonably be had or obtained for the same; and for that end and purpose to sign, seal, execute, deliver, and acknowledge all such deeds, conveyances, bills of sale or assurances, as shall be required by the purchaser or purchasers thereof, his, her, or their heirs or assigns. And upon this further trust and confidence, and to the end, intent, and purpose, that he, the said George Davis, his heirs, executors, and administrators, shall pay and apply the moneys arising from such sale and sales, and the rents, issues, and profits of the premises in the mean time (after all costs, charges, and expenses attending this trust are deducted) for and towards the payment and discharge of the debt due and owing by the said David Franks to the said Amos Hayton; and upon this further trust and confidence, that in case the moneys arising from the sale or sales aforesaid, shall and may be more than sufficient to discharge the debt due and owing as aforesaid, with the interest which hath accrued or may accrue thereon, that then he, the said George Davis, shall and will pay such overplus to the said David Franks, his executors, administrators, or assigns, and to and for no other use, intent, or purpose whatsoever. And the better to enable the said George Davis to do, execute, fulfil, and perform the uses, trusts, intents, and purposes in these presents mentioned, the said Isaac Hazlehurst, Tench Coxe, and David Franks, do hereby nominate, constitute, and appoint him, the said George Davis, his executors, administrators, their true and lawful attorney, irrevocable for them, the said Isaac Hazlehurst, Tench Coxe, and David Franks, in their name or names, or otherwise, but for the uses, intents, and purposes aforesaid, to ask, demand, sue for, and by all lawful way and means recover and receive of and from all and every person and persons whomsoever, all or any and every part of the sum and sums of money, debts, rights, credits, effects, or other the premises hereby granted, assigned, or set over, or mentioned, or intended so to be; and upon the receipts thereof to give one or more releases, acquittances, or other discharges for the same, in as full and ample a manner as they, the said Isaac Hazlehurst, Tench Coxe, and David Franks, or either of them, might or could do being present; they, the said Isaac Hazlehurst, Tench Coxe, and David Franks ratifying and confirming, and holding for valid and effectual, all and whatsoever their

said attorney shall lawfully do, or procure to be done, in the premises. In witness whereof the said parties to these presents have interchangeably set their hands and seals hereunto, the day and year first within written.

ISAAC HAZLEHURST, [SEAL.]
TENCH COXE, [SEAL.]
GEORGE DAVIS, [SEAL.]
DAVID FRANKS. [SEAL.]

Sealed and delivered in the presence of us, by Isaac Hazlehurst and Tench Coxe, Moses Levy, Assheton Humpreys. Sealed and delivered in the presence of us, by David Franks and George Davis, Assheton Humphreys, James Humphreys, the eighteenth day of May, anno domini 1793.

Before me, Jonathan Bayard Smith, esq., one of the judges of the court of common pleas of Philadelphia county, came Tench Coxe, in the foregoing written indenture named, and acknowledged the same indenture to be their several and respective act and deed, and desired the same may be recorded as such. Witness my hand and seal, the day and year aforesaid.

J. B. SMITH. [SEAL.]

City of Philadelphia, ss:

The twenty-seventh day of May, in the year of our Lord 1793, before me, Jonathan Bayard Smith, esq., one of the justices of the court of common pleas for the county of Philadelphia, personally appeared Assheton Humphreys, one of the subscribing witnesses to the foregoing written indenture, and made oath on the holy evangelists of Almighty God, that he was personally present, and did see the therein named Isaac Hazlehurst, Tench Coxe, David Franks, and George Davis, severally seal, and as their respective act and deed deliver the same; and that the name of this appearer thereunder subscribed as a witness of the sealing and delivery of the said indenture by the said Isaac Hazlehurst and Tench Coxe, and that James Humphreys did also sign and subscribe his name thereunder as a witness of the sealing and delivery of the said indenture by the said David Franks and George Davis.

ASSHETON HUMPHREYS.

Sworn before me, the day and year above said.

J. B. SMITH.

Received the first day of August, and recorded the 30th day of August, 1793.

H.

Acts to be performed by Mrs. Leah Phillips, surviving executrix of Joseph Simon, deceased:

1. To execute deed for Michael Gratz's interest in unsold lands.
2. To direct her attorney in suit, (in the court of common pleas of Lancaster county, of January term, 1822,) No. 163.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased,
vs.
LEVI PHILLIPS, Leah Phillips, and Bilah Cohen, executors of Joseph Simon, deceased.

Amicable action, August term, 1822, award of referees in favor of plaintiffs for $2967 34.

To bring up the case on agreement, then permit the exceptions to be overruled, and the award affirmed.

3. To settle the sum due on the sale of house and lots in Carlisle, in judgment in supreme court, which shall be submitted to the auditors to report thereon.

4. The suit, LEVI PHILLIPS, Leah Phillips, and Bilah Cohen, executors of Joseph Simon, dec.,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased.

In the court of Lancaster county, September term, 1828.—No. 2.

Mrs. Phillips and her attorney to direct discontinuance of this action.

5. To transfer all her interest in the estate of Joseph Simon to Simon Gratz for the sum of ($ blank, this to be fixed,) if the product of this shall produce a sum exceeding the amount of the above judgments, and the sum to be paid as a consideration, then the excess to be paid over to Mrs. Leah Phillips.

The blank to be filled up with fifteen hundred dollars; five hundred dollars in hand, five hundred dollars in one year, and five hundred dollars in two years.

S. GRATZ.

February 15, 1833.

I.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased,
vs.
LEVY PHILLIPS, Leah Phillips, and *Beliah* Cohen, executors of Joseph Simon, deceased.

In the common pleas of Lancaster county, of the term of January, 1822. No. 168.

Joseph S. Cohen being duly sworn saith, that he was one of the attorneys of the defendants in the above cause; that he firmly believes he and Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, Samuel M. Cohen, and Eleazar L. Cohen, children of *Beliah* Cohen, deceased, are interested in the estate of the late Joseph Simon under his last will; that Levy Phillips, one of the executors died, on or about the 15th January, 1832, and that

Beliah Cohen, another executrix of the said Joseph Simon, departed this life on the 29th January, 1833; that the special power of attorney to B. Champneys, esq., was executed by Leah Phillips, surviving executrix, without the knowledge and consent of this deponent, and, as he firmly believes, without the knowledge and consent of the said Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, Samuel M. Cohen, and Eleazar L. Cohen; that the first knowledge of the same was obtained by him on the twenty-third instant, at Lancaster, where he arrived from Harrisburg on the evening of the twenty-second instant, to make arrangements for the trial and continuance of a cause of Simon's executors vs. Gratz's administrators, on the trial list of the circuit court for the 8th of April next; that he attended to the business of his late mother, and believes no communication between her and the executrix, Leah Phillips, or between her and any of the plaintiffs, took place with a view to such a disposition of the cause as is now sought for under the power of attorney; that if any communication had taken place with his late mother, he firmly believes he would have been apprised of it. That Mrs. Leah Phillips is advanced in age, and her sight so much impaired as to prevent her reading written documents. That this deponent had no expectation of the case being now disposed of in any way, and is necessarily absent from home, and without his books and papers. That, if the judgment be rendered, it will naturally impair the interest of himself and his sisters and brothers before named; that he believes many of the exceptions to the award are valid in law and fact.

J. SIMON COHEN.

Sworn and subscribed before me, this 25th day of March, 1833.

SAMUEL DALL,
Alderman of Lancaster county.

J.

In the court of common pleas of Lancaster county, of January term, 1822—No. 163.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased,
vs.
LEVI PHILLIPS, Leah Phillips, and *Beliah* Cohen, executors of Joseph Simon, deceased.

Amicable action on the case.

And now, March 25, 1833, Mr. Hopkins, on motion and affidavit filed, moves the court for a rule to show cause, why Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, Samuel M. Cohen, Joseph S. Cohen, and Eleazar L. Cohen, children of *Beliah* Cohen, and interested in the estate of the said Joseph Simon under his last will and testament, should not be permitted to come in and take defence in the above action, and show cause

why the exceptions to the award should not be sustained, notwithstanding an alleged special power of attorney from Leah Phillips, surviving executrix of the said Joseph Simon, to B. Champneys, esq., authorizing him to enter judgment for the plaintiffs.

Attest: CHRISTIAN BACHMAN.

Rule granted.

K.

List of papers delivered by Mrs. Leah Phillips.

Account, Ephraim Blaine with Joseph Simon, dated April, 1793.

Cancelled deed, Levy Phillips and Beliah Cohen to Joseph S. Cohen, for two tracts of land in Turbut township, Northumberland county.

Deed, Martin Withrington to Joseph Simon, for two tracts of land in Turbut township, 7th July, 1789.

Patent, L. Andrew Levy, two tracts of land, 177, 148 acres, No. 16, Northumberland county.

Do. do. for 200 acres, No. 15.

Patent, Joseph Simon, for a tract of land, 322 acres, called Desolation, No. 302.

James Hamilton, esq. to Joseph Simon, lease for lot, No. 165.

Patent to John F. Mifflin, for tract of land, in the name of Thos. Freet.

Deed, Martin Withrington to Joseph Simon, for ten tracts of land, estate of William Trent.

Do. for one tract, Henry Ayres.

Do. for one tract, Samuel Laird.

Solomon Etting and wife, deed for one tract, name, P. Palmer.

Do. do. Samuel Laird, tract of land.

John Davis and wife, Matthew McConnel, for two tracts of land in name of James Wilt and D. Lawrence.

Two patents, Matthew McConnel, for same.

Deed, Matthew McConnel to Patrick Garvey and Mary McAllister, endorsed a conveyance to George Moore.

Deed, from Moore and wife to Joseph Simon.

Release, Epenetus Hart to Joseph Simon.

Mortgage, William Trent to David T. Franks and Joseph Simon.

Bond, same to same.

Copy conveyance, J. Hunt to William Cox.

Conveyance, Daniel Lawrence to William Trent.

Engagement, David Franks and Jeremiah Warder to William Trent and George Croghan.

Several drafts for surveys for Middle Creek lands.

Lease, James Hamilton to John Garner.

Do. Thomas Cuxen to Invicus and Joseph Simon.

Do. James Hamilton to Morris Bond.

Letter of attorney, Andrew Levy to Joseph Simon.

Lease, William Stein to Joseph Simon.

Deed, Leah Phillips and *Betiah* Cohen to William Stein and John Stein, for lands in Hemlock township, Northumberland county. Draft of the lands.

L.

This indenture, made the third day of April, in the year one thousand eight hundred and thirty-three, between Leah Phillips, of the city of Philadelphia, widow, surviving executrix of the last will and testament of Joseph Simon, late of the city of Lancaster, merchant, deceased, of the one part, and Simon Gratz, merchant, of the city of Philadelphia, of the other part. Whereas, the said Joseph Simon, was in his lifetime, by sundry deeds, &c., invested with the legal estate of the first fourteen hereinafter described tracts of land, but the said Joseph Simon was beneficially interested in his own right only to the one moiety and to the one-fourth part of the said tracts of land as hereinafter mentioned, he holding the legal estate in the other moiety in *and* other fourth part, in trust for Michael Gratz, according to his, the said Joseph Simon's, declaration of trust; and whereas the said Leah Phillips, executrix of the last will and testament of the said Joseph Simon, has this day conveyed to Simon Gratz the one moiety, and the one-fourth part of the said tracts of land, to which the said Michael Gratz and his heirs were in equity entitled, and the said declaration of trust in which the said Michael Gratz was beneficially interested; and it is intended, upon the consideration passing between the parties hereto, now also to convey to the said Simon Gratz the other moiety, and the other one-fourth part of the said tracts of land, of which the said Joseph Simon was seized in his own right, is equitably and beneficially as well as in his legal estate; and it is also intended to convey to the said Simon Gratz three other tracts of land, the three herein last described tracts of the said Joseph Simon, of the legal estate of which the said Joseph Simon was seized in his lifetime, not subject to any trust.

Now, therefore, this indenture witnesseth, that the said Leah Phillips, surviving executrix aforesaid, for and in consideration of the sum of one thousand five hundred dollars, lawful money of the United States of America, unto her, at or before the ensealing or delivery hereof, by the said Simon Gratz well and truly paid, the receipt whereof is hereby acknowledged, have granted, bargained and sold, aliened, enfeoffed, released and confirmed; and by these presents, by virtue of the power and authority given by the last will and testament of the said Joseph Simon, deceased, do grant, bargain and sell, alien, enfeoff, release and confirm, to the said Simon Gratz, and to his heirs and assigns, one full, equal, and undivided moiety or half part of a certain tract of land, situated in Union county, in the State of Pennsylvania, containing two hundred and ninety-three acres, and allowance surveyed to William Cox; also, one undivided moiety or half part of a certain tract of land, situate in Union county aforesaid, containing two hundred and thirty-six acres

and three-tenths of an acre, and allowance surveyed to Charles Dunigan; also, one undivided fourth part of a certain tract of land, situate in Union county aforesaid, containing four hundred and four acres and three-tenths of an acre, and allowance surveyed in the name of Thomas Freet; also, one undivided fourth part of a certain tract of land, situate in Union county aforesaid, containing three hundred and sixty-four acres and seven-tenths of an acre, and allowance surveyed in the name of James Furgeson; also, one undivided moiety or half part of a certain tract of land in Juniata county, containing one hundred and sixty-five acres and four-tenths of an acre, and allowance surveyed in the name of Daniel Laurence; also, one undivided moiety or half part of a certain tract of land in Juniata county, containing three hundred and fourteen acres and three-tenths of an acre, and allowance surveyed in the name of James Wilkes; also, one undivided moiety or half part of a certain tract of land, situate in Union county, containing one hundred and ninety-five acres and seven-tenths of an acre, and allowance surveyed in the name of James Hunt; also, one undivided moiety and half part of a tract of land in Union county, containing two hundred acres, and allowance surveyed in the name of Phillip Palmer; also, one undivided moiety and half part of a certain tract of land in Union county, containing one hundred and forty-three acres and seven-tenths of an acre, and allowance surveyed in the name of Samuel Laird; also, one undivided fourth part of a certain tract of land, situate in Union county, containing one hundred and ninety-two acres, and eighty-three perches, and allowance surveyed in the name of William Foster; also, one undivided fourth part of the four next following tracts of land, situate in Bedford county, one of them surveyed in the name of James Dayley, containing two hundred and sixty-nine acres and thirty-two perches; another of them in the name of Angus McPherson, containing three hundred and thirteen acres and one hundred and twenty perches; another of them in the name of Alexander Douglass, containing three hundred and sixteen acres, and the other of them in the name of Thomas Hollowell, containing two hundred and eighty-three acres and one hundred and twenty perches; and also three certain tracts or pieces of land, situate in the county of Columbia, late Turbut township, in the county of Northumberland, in the State of Pennsylvania, one of them surveyed in the name of Michael Gratz, containing one hundred and seventy-seven acres and allowance; another of them, surveyed in the name of Levi Andrew Levi, containing one hundred and forty-six acres and allowance; and the other of them, surveyed in the name of the said Levi Andrew Levi, containing two hundred acres and allowance; together with all and singular the rights, members, and appurtenances whatsoever, thereunto belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof. And also all the estate, right, title, and interest which was of him, the said Joseph Simon, at or immediately before his decease, in law, equity, or otherwise howsoever, of, in, and to the premises hereby granted; and also all moneys, principal and interest, due and to grow due on all

lands, sold or contracted to be sold to any person or persons whatsoever, either by the said Joseph Simon in his lifetime, or by his executors since his decease; and all moneys which may have arisen from any such sales in the hands or possession of any person or persons whatsoever; to have and to hold, receive, take, and enjoy all and singular the premises hereby granted with the appurtenances unto the said Simon Gratz, his heirs and assigns, to his and their only proper use and behoof forever.

In witness whereof the said Leah Phillips, surviving executrix aforesaid, hath hereunto set her hand and seal, dated the day and year first above written.

LEAH PHILLIPS. [L. S.]

Sealed and delivered in the presence of us. The word "his" in the twenty-fifth line being first inserted.

L. MOSS, [L. S.]
JOSEPH LEVI.

Received the day of the date of the above written indenture of the above named Simon Gratz, the sum of one thousand five hundred dollars, being the full consideration money above mentioned.

LEAH PHILLIPS.

Witness at signing, J. Moss. April 3, 1833.

The third day of April, A. D. eighteen hundred and thirty-three, before me, the subscriber, an alderman of the city of Philadelphia, came the above named Leah Phillips, and acknowledged the above written indenture to be her act and deed, and desired that the same might be recorded as such. Witness my hand and seal.

A. PETTIT, [L. S.] *Alderman.*

Recorded this 24th day of May, A. D. 1833, in deed book for recording of deeds in Columbia county, in D. B., &c. from 37, 372.

JOHN COOPER, *Recorder.*

M.

LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors, &c., of Joseph Simon, deceased,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators, &c., of Michael Gratz, deceased.

In the circuit court of Lancaster county, Sept. term, 1828.—No. 2.

I, Leah Phillips, sole surviving executrix, &c., of the last will and testament of Joseph Simon, deceased, and sole surviving plaintiff in the above cause, do hereby, at the recommendation of John Moss and L. J. Levy, my personal friends, authorize and direct Benjamin Champ-

neys, esq., of Lancaster, attorney at law, or any other attorney, to appear for me in the above suit, and to suggest on the record the deaths of Levi Phillips and Beliah Cohen, two of the above named plaintiffs, and to suffer a verdict to be taken for the defendants, and judgment thereon in their favor to be entered; for which this shall be his authority.

March 18, 1833. LEAH PHILLIPS.

Witness: J. Moss.

Filed, April 8, 1833.

N.

Supreme court of Pennsylvania, eastern district, M. 1811, 58.

SIMON GRATZ et al., administrators of Michael Gratz, deceased, vs. LEAH PHILLIPS, surviving executrix, &c., of Joseph Simon, deceased. } Account render.

The deaths of Levi Phillips and Beliah Cohen suggested.

And the auditors so appointed as aforesaid, having heretofore assigned divers days and times for taking the account of the defendants, but the same not being then taken, assigned the day of March, 1833, to take the account of the surviving defendant; it being shown to us that the deaths of the other two defendants, Levi Phillips and Beliah Cohen, were suggested on the record; on which said day of March, 1833, came the parties aforesaid before the auditors.

And the auditors here bring into court the account of Leah Phillips, the surviving defendant and executrix of the last will and testament of Joseph Simon, deceased, the tenor whereof is as follows:

The account of Leah Phillips, surviving defendant and executrix of the last will and testament of Joseph Simon, deceased, of and concerning the sum of 100 pounds, being the one-half of two hundred pounds and 6 pence; concerning which the executors of the said Joseph Simon, deceased, were adjudged to render an account, herein specifying the various sums received, and the times at which the said 100 pounds and the interest accruing thereon, were received by the said Joseph Simon, deceased, in his lifetime, and also the interest due on such receipts to the time of rendering this account:

1790.—July 14.	Cash received by Jos. Simon,	£10 7 0	$27 70
	Interest thereon to the 28th March, 1833,		70 90
Sept. 2.	Cash received by Jos. Simon,	£37 10 0	100 00
	Interest thereon to the 28th March, 1833,		225 20
1791.—Oct. 6.	Cash received by Jos. Simon,	£48 15, -	130 00
	Interest thereon to March 28, 1833,	-	823 enj.
1792.—Aug. 8.	Cash received by Jos. Simon,	£6, -	ly em-
	Interest thereon to March 28, 1833,		

lands, sold or contracted to be sold to any person or persons whatsoever, either by the said Joseph Simon in his lifetime, or by his executors since his decease; and all moneys which may have arisen from any such sales in the hands or possession of any person or persons whatsoever; to have and to hold, receive, take, and enjoy all and singular the premises hereby granted with the appurtenances unto the said Simon Gratz, his heirs and assigns, to his and their only proper use and behoof forever.

In witness whereof the said Leah Phillips, surviving executrix aforesaid, hath hereunto set her hand and seal, dated the day and year first above written.

LEAH PHILLIPS. [L. S.]

Sealed and delivered in the presence of us. The word "his" in the twenty-fifth line being first inserted.

L. MOSS, [L. S.]
JOSEPH LEVI.

Received the day of the date of the above written indenture of the above named Simon Gratz, the sum of one thousand five hundred dollars, being the full consideration money above mentioned.

LEAH PHILLIPS.

Witness at signing, J. Moss. April 3, 1833.

The third day of April, A. D. eighteen hundred and thirty-three, before me, the subscriber, an alderman of the city of Philadelphia, came the above named Leah Phillips, and acknowledged the above written indenture to be her act and deed, and desired that the same might be recorded as such. Witness my hand and seal.

A. PETTIT, [L. S.] *Alderman.*

Recorded this 24th day of May, A. D. 1833, in deed book for recording of deeds in Columbia county, in D. B., &c. from 37, 372.

JOHN COOPER, *Recorder.*

M.

LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors, &c., of Joseph Simon, deceased,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators, &c., of Michael Gratz, deceased.

In the circuit court of Lancaster county, Sept. term, 1828.—No. 2.

I, Leah Phillips, sole surviving executrix, &c., of the last will and testament of Joseph Simon, deceased, and sole surviving plaintiff in the above cause, do hereby, at the recommendation of John Moss and L. J. Levy, my personal friends, authorize and direct Benjamin Champ-

neys, esq., of Lancaster, attorney at law, or any other attorney, to appear for me in the above suit, and to suggest on the record the deaths of Levi Phillips and Beliah Cohen, two of the above named plaintiffs, and to suffer a verdict to be taken for the defendants, and judgment thereon in their favor to be entered; for which this shall be his authority.

March 18, 1833. LEAH PHILLIPS.

Witness: J. Moss.

Filed, April 8, 1833.

N.

Supreme court of Pennsylvania, eastern district, M. 1811, 58.

SIMON GRATZ et al., administrators of Michael Gratz, deceased,
vs.
LEAH PHILLIPS, surviving executrix, &c., of Joseph Simon, deceased.
} Account render.

The deaths of Levi Phillips and Beliah Cohen suggested.

And the auditors so appointed as aforesaid, having heretofore assigned divers days and times for taking the account of the defendants, but the same not being then taken, assigned the day of March, 1833, to take the account of the surviving defendant; it being shown to us that the deaths of the other two defendants, Levi Phillips and Beliah Cohen, were suggested on the record; on which said day of March, 1833, came the parties aforesaid before the auditors.

And the auditors here bring into court the account of Leah Phillips, the surviving defendant and executrix of the last will and testament of Joseph Simon, deceased, the tenor whereof is as follows:

The account of Leah Phillips, surviving defendant and executrix of the last will and testament of Joseph Simon, deceased, of and concerning the sum of 100 pounds, being the one-half of two hundred pounds and 6 pence; concerning which the executors of the said Joseph Simon, deceased, were adjudged to render an account, herein specifying the various sums received, and the times at which the said 100 pounds and the interest accruing thereon, were received by the said Joseph Simon, deceased, in his lifetime, and also the interest due on such receipts to the time of rendering this account:

1790.—July 14.	Cash received by Jos. Simon, £10 7 0		$27 70
	Interest thereon to the 28th March, 1833,		70 90
Sept. 2.	Cash received by Jos. Simon, £37 10 0		100 00
	Interest thereon to the 28th March, 1833,		225 20
1791.—Oct. 6.	Cash received by Jos. Simon, £48 15,	-	130 00
	Interest thereon to March 28, 1833,	-	823 30
1792.—Aug. 8.	Cash received by Jos. Simon, £6,	-	16 00
	Interest thereon to March 28, 1833,	-	39 00

1792.—Nov. 1.	Cash received by Jos. Simon,	£16	7	6	
	Do. balance of the £100, and interest,	6	10	0	
		£22	17	6	$62 33
	Interest thereon to March 28th, 1833,				$1175 43

LEAH PHILLIPS,
Surviving defendant and executrix of the last will and testament of Joseph Simon, deceased.

Philadelphia, March 28th, 1833.
Witness: J. Moss,
LYON JOSEPH LEVY.

And the auditors report the said account of the said Leah Phillips, surviving executrix, &c., as aforesaid, so made before them, and do further report and award that there is due from the estate of Joseph Simon, deceased, and from the said executrix of the said Joseph Simon, deceased, to the plaintiffs, the sum of 1,175 dollars and 43 cents, on the 28th day of March, 1833, according to the foregoing account, signed by the said accountant, and interest thereon from the said 28th day of March, 1833.

A correct copy of the account in handwriting of Mr. Purdon, and copy of award, and compared by me in presence of the parties.

MICHAEL W. ASH, *Alderman.*

O.

PHILADELPHIA, *March 29th*, 1833.

Messrs. JOSEPH GRATZ and JACOB GRATZ,
Administrators of Michael Gratz, deceased.

GENTLEMEN: Having had information recently that powers of attorney have been given to authorize entries of judgment in favor of Michael Gratz's administrators, in all cases between them and the executors of Joseph Simon, deceased, by Leah Phillips, surviving executrix, we have thought it proper to state to you, that we conceive any arrangement that has been made without our knowledge or consent *as* illegal and manifestly injurious. We now request you to state distinctly whether or not you are in any way parties to the arrangement, or whether it was made with your knowledge or consent. An answer is desired before Monday at noon, as further proceedings may depend thereon.

SARAH M. COHEN,
REBECCA M. COHEN,
RACHEL M. COHEN,
ELKALAH M. COHEN,
ABRM. MYERS COHEN.
SAMUEL M. COHEN,
J. SIMON COHEN,
ELEAZAR L. COHEN.

Pleas before the honorable William Tilghman, chief justice, and his associate justices of the supreme court of the Commonwealth of Pennsylvania, at Philadelphia.

Of the term of March, anno domini one thousand eight hundred and eleven, of the supreme court of the eastern district of Pennsylvania, among other things, it is thus contained:

Levy Phillips, Leah Phillips, and Bell Cohen, executors of the last will and testament of Joseph Simon, late of the same county, merchant, were summoned to answer Simon Gratz, Joseph Gratz, and Jacob Gratz, administrators of the goods and chattels, rights and credits, which were of Michael Gratz, deceased, of a plea that they render to them a just and reasonable account of the time that the said Joseph Simon was the receiver of the moneys of the said Michael, from whatever cause or contract arising. Whereupon, by William Meredith, their attorney, the said Simon, Joseph, and Jacob, administrators, &c., declare that the said Joseph Simon, in his lifetime, to wit, from the twenty-second day of May, seventeen hundred and ninety, until the commencement of this suit, was, at the county aforesaid, receiver of the moneys of the said Michael, and of the said Michael and a certain Bernard Gratz, since deceased, whom the said Michael survived, which Michael and Bernard then were merchants and co-partners, and did receive, by the hands of the sheriff of Cumberland county, in the State of Pennsylvania, the sum of two hundred pounds and six pence, and by the hands of the sheriff of Northumberland county, in the same State, the sum of fourteen hundred and thirty-nine pounds three shillings and eleven pence; which said sums of money were of, and belonging to, the said Joseph Simon, Michael and Bernard Gratz, in their respective lifetimes, as merchants and co-partners, and whereof the said Joseph Simon was, in his life, to have rendered to the said Michael and to the said Michael and Bernard a reasonable account when thereto required. Yet, although often required, neither the said Joseph Simon, in his lifetime, nor the said Leah, Levy, and Bell, since his decease, have rendered to the said Michael, in his lifetime, nor to the said Michael and Bernard in their respective lifetimes, nor to the said Simon, Joseph, and Jacob, administrators, &c., since the decease of the said Michael, any reasonable account of the said moneys, but wholly have refused, and the said Leah, Levy, and Bell still do refuse, to render any account thereof, to their damage forty thousand dollars; and thereof they bring suit, &c., &c. And the defendants come and, by their attorney, plead, that the testator was never bailiff or receiver, within six years' statute of limitations, with leave to add, alter, and amend, and leave to give the special matter in evidence. Plaintiffs reply, bailiff and receiver, within six years afterwards, to wit, at nisi prius, at Philadelphia, 26th October, 1813, a jury being called, come, to wit, Samuel Rittenhouse, Samuel Emlen, Jacob Sheble, Daniel Steinmetz, Mark Richards, Benj. Clark, Daniel Rittenhouse, Benj. Williams, Dobel Baker, and Benjamin Cusson, who, being duly em-

pannelled, returned, chosen, sworn, and affirmed, at the request of the plaintiff a juror is withdrawn, and jury dismissed by the court. Afterwards, the plaintiffs, on the seventeenth of January, eighteen hundred and sixteen, file a special replication, to wit:

And the said Simon, Joseph, and Jacob Gratz, administrators aforesaid, by William Meredith, their attorney aforesaid, come and say that they, by any thing by the said Levy, Leah, and Bell above in pleading alleged, ought not to be barred from having their said action thereof against them, because they say that the said accounts and dealings, whereof they pray an account, are such accounts as concern the trade of merchandise between merchant and merchant, and because the same accounts are and were open and running accounts between the said Michael, in his lifetime, and the said Joseph Simon, in his lifetime, and between the said Michael, in his lifetime, and the said Levy, Leah, and Bell, executors of the said Joseph Simon, since the death of the said Joseph, to wit, at the county aforesaid; and this they are ready to verify.

And the said Simon, Joseph, and Jacob Gratz further say, that they ought not to be precluded, because they say that the said Michael did not know, and had not discovered the receipt of the said moneys so as aforesaid by him charged to have been received by the said Joseph Simon, and by the said Levy, Leah, and Bell, until the day of June, MDCCCV, at the county aforesaid; and this they are ready to verify.

And the said Simon, Joseph, and Jacob, for further replication, say that the said Joseph became, and the said Leah, Levy, and Bell were, receivers of the moneys of the said Michael within the term of six years before suing forth this writ, &c.; and this, &c.

W. MEREDITH,
Attorney for plaintiffs.

Afterwards, at a court of nisi prius at Philadelphia, on the twenty-second day of April, eighteen hundred and sixteen, defendants at the trial by order of the court, rejoin to the replication of plaintiffs, filed seventeenth January, eighteen hundred and sixteen, that the action does not concern merchants' accounts; and for further rejoinder, that there were no open or running accounts between them, which concerned the trade of merchandise, and on this he joins issue; and further replies (protesting against his being obliged to rejoin) that the knowledge of the liability was in the possession of plaintiff more than six years, &c.; and these facts he prays may be inquired by the county.

Z. PHILLIPS, *for defendants.*

Eodem die, a jury being called, come, to wit: Charles Macknett, Edward Thomas, William Thackard, jr., George Honey, jr., John Lee, William Flintham, Mordecai Y. Bryant, Samuel Church, John McMullin, John Cooper, Charles Baker, and Samuel R. Wood, who being duly empannelled, returned, tried, chosen, sworn, and affirmed, upon their oaths and affirmations, respectively, do say, that they find for the

plaintiffs, ninth December, 1816; judgment nisi, ninth December, 1816. Mr. Phillips enters a motion for a rule to show cause why there should not be a new trial; twelfth December, 1816, by consent, new trial awarded.

Afterwards, to wit, twenty-eighth November, 1817, a court of nisi prius held at Philadelphia, a jury being called, come, to wit:

Nathan Dunn, George R. Gardner, James Hall, John Delamater, William Chamberlain, John Carter, William White, Jonathan White, Alexander Prevost, Joseph Green, Jacob Lentz, and George Peters, who being duly selected by ballot, tried, chosen, sworn, and affirmed, upon their oaths and affirmations aforesaid, were respectively discharged by the court.

Third February, 1818, at nisi prius at Philadelphia, a jury being called, come, to wit:

George Landell, George Widdifield, Martin Deal, Jacob Kiegler, William Snyder, John Nutz, Revert Boardman, who being duly empannelled, returned, tried, chosen, sworn, and affirmed, and a full jury not attending, the sheriff, by consent of parties and order of court, returned from among the bystanders, Isaac Harbert, Thomas Fitzgerald, Simeon Mason, John Cromwell, and James Harper, jr., who being duly sworn with the rest of the jury, upon their oaths and affirmations, respectively, do say, viz:

First. Joseph Simon was the receiver of moneys of Michael Gratz and Bernard and Michael Gratz.

Second. That the fourteen hundred and thirty-nine pounds three shillings and eleven pence have been fully accounted for, but the two hundred pounds and six pence have not been accounted for.

Third. That Joseph Simon was not receiver, &c., within six years before the commencement of this suit.

Fourth. That the account did not concern the trade of merchandise between merchant and merchant.

Fifth. That the knowledge of the receipt of the two hundred pounds and six pence did not come to Michael Gratz, deceased, or to the plaintiffs, until within six years before the commencement of this suit; but the knowledge of the receipt of the fourteen hundred and thirty-nine pounds three shillings and eleven pence came to the said Michael Gratz more than six years before the commencement of this suit.

Sixteenth March, eighteen hundred and eighteen, judgment quod computent nisi for two hundred pounds and six pence.

Second April, eighteen hundred and eighteen, on motion of Mr. Meredith, the court appoint John Read, esq., Joshua Percival, and Matthew L. Bevan, auditors in this case.

Afterwards, to wit, January , 1829, on motion of Joseph S. Cohen, the court grant a rule to show cause why the appointment of auditors should not be set aside; after argument, rule discharged by the court.

February 1, 1832, by writing filed, the death of Levi Phillips, one of the defendants, suggested; and now, March 27th, 1833, death of Bell Cohen, one of the defendants, suggested by writing filed.

pannelled, returned, chosen, sworn, and affirmed, at the request of the plaintiff a juror is withdrawn, and jury dismissed by the court. Afterwards, the plaintiffs, on the seventeenth of January, eighteen hundred and sixteen, file a special replication, to wit:

And the said Simon, Joseph, and Jacob Gratz, administrators aforesaid, by William Meredith, their attorney aforesaid, come and say that they, by any thing by the said Levy, Leah, and Bell above in pleading alleged, ought not to be barred from having their said action thereof against them, because they say that the said accounts and dealings, whereof they pray an account, are such accounts as concern the trade of merchandise between merchant and merchant, and because the same accounts are and were open and running accounts between the said Michael, in his lifetime, and the said Joseph Simon, in his lifetime, and between the said Michael, in his lifetime, and the said Levy, Leah, and Bell, executors of the said Joseph Simon, since the death of the said Joseph, to wit, at the county aforesaid; and this they are ready to verify.

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Attorney for plaintiffs.

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Z. PHILLIPS, *for defendants.*

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plaintiffs, ninth December, 1816; judgment nisi, ninth December, 1816. Mr. Phillips enters a motion for a rule to show cause why there should not be a new trial; twelfth December, 1816, by consent, new trial awarded.

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First. Joseph Simon was the receiver of moneys of Michael Gratz and Bernard and Michael Gratz.

Second. That the fourteen hundred and thirty-nine pounds three shillings and eleven pence have been fully accounted for, but the two hundred pounds and six pence have not been accounted for.

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Fourth. That the account did not concern the trade of merchandise between merchant and merchant.

Fifth. That the knowledge of the receipt of the two hundred pounds and six pence did not come to Michael Gratz, deceased, or to the plaintiffs, until within six years before the commencement of this suit; but the knowledge of the receipt of the fourteen hundred and thirty-nine pounds three shillings and eleven pence came to the said Michael Gratz more than six years before the commencement of this suit.

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Afterwards, to wit, January , 1829, on motion of Joseph S. Cohen, the court grant a rule to show cause why the appointment of auditors should not be set aside; after argument, rule discharged by the court.

February 1, 1832, by writing filed, the death of Levi Phillips, one of the defendants, suggested; and now, March 27th, 1833, death of Bell Cohen, one of the defendants, suggested by writing filed.

Afterwards, to wit, July 29th, 1833, on motion of Benjamin Tilghman, esq., the court grant a rule to show cause why Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, Samuel M. Cohen, Joseph S. Cohen, and Eleazar L. Cohen, children of Bilah Cohen, deceased, and interested in the estate of Joseph Simon under his last will and testament, should not be permitted to come and take defence in the above action.

Eodem die, affidavit of Joseph S. Cohen filed, a copy of which is in the words following, to wit:

GRATZ'S administrators
vs.
PHILLIPS and others, executors of Simon.

S. C. E. D., March, 1811.—No. 58.

Joseph S. Cohen, being duly sworn, saith that Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, Samuel M. Cohen, Eleazar L. Cohen, and this deponent, the children of Bell Cohen, deceased, are interested in the estate of Joseph Simon, late of Lancaster county, deceased, under his last will and testament; that Levy Phillips, one of the executors of the said Joseph Simon, died on the 15th January, 1832, and that Bell Cohen, an executrix of the said estate, departed this life on the 29th January, 1833; that an agreement was made between the surviving executrix, Leah Phillips, and Simon Gratz, one of the plaintiffs, a copy of which is hereto annexed, without the knowledge and consent of this deponent, or his said brothers and sisters, which said agreement was first seen by this deponent on the examination before Michael W. Ash, esq., on the 13th June last, of L. J. Levy, a witness in a proceeding to remove the surviving executrix from her office; that on the 27th of March, 1833, the death of Bell Cohen, one of the executrices, was suggested on the records of this court; and a paper, purporting to be a report for the auditors, a copy of which is hereto annexed, was prepared by John Purden, esq., containing an account, signed by the said Leah Phillips on the 28th March, that an application has been made to the orphan's court of Lancaster county to remove the said Leah Phillips from the office of executrix, which is now pending. That the auditors in this case met on the 30th May and 7th June last, when neither the said Leah Phillips, nor any person for her, appeared before them, this deponent appearing for the children of the said Bell Cohen; that the said auditors adjourned, that an application might be made to this honorable court. That within a few days after the agreement above referred to, between Mrs. Leah Phillips and Simon Gratz, as appears by the depositions of the said L. J. Levy and Simon Gratz, a trunk containing papers of the estate of the said Joseph Simon was sent to L. J. Levy's house, and was examined by the said Simon Gratz, who took such papers as he pleased, without giving any receipt for the same. Among the papers so taken was an account in relation to this suit,

which said account was retained by him, the said Simon Gratz, until the 14th June.

That from the agreement before mentioned between the said Leah Phillips and Simon Gratz, which this deponent believes was made collusively, and with an intent to injure and improperly affect the rights of himself and his brothers and sisters, and from the conduct of the said Leah Phillips, this deponent believes that the case will not be defended by her, though there is to the same a defence, as he believes; and that it is essential to the interests of the said children of the said Bell Cohen that there should be an order of the court to protect their rights.

J. SIMON COHEN.

Sworn and subscribed this 29th day of July in open court.—Pro. pro.
STEPHEN PAYRAN, Jr.

Acts to be performed by Mrs. Leah Phillips, surviving executrix of Jos. Simon, deceased:

1. To execute deed for Michael Gratz's interest in unsold lands.

2. To direct her attorney in suit, (in the court of common pleas of Lancaster county, of January term, 1822, No. 163,

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased,
vs.
LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors of Joseph Simon, deceased.

Amicable action, August 10th, 1822; award of referees in favor of plaintiffs for $2,967 34—exceptions filed to report.

To bring up the case on agreement, then permit the exceptions to be overruled, and the award affirmed.

3. To settle the sum due on sale of house and lots in Carlisle, on judgment in the supreme court, which shall be submitted to the auditors to report thereon.

4. The suit—LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors of Jos. Simon, deceased,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased,

In the court of Lancaster county, September term, 1828.—No. 2.

Mrs. Phillips and her attorney to direct discontinuance of this action.

5. To transfer all her interest in the estate of Joseph Simon to Simon Gratz for the sum of ($ blank, this to be fixed;) if the product of this shall produce a sum exceeding in amount the above judgments, and the sum to be paid as a consideration, then the excess to be paid over to Mrs. Leah Phillips; the blank to be filled up with fif-

teen hundred dollars—five hundred in hand, five hundred in one year, and five hundred in two years. S. GRATZ.

February 15th, 1833.

Sup. court, Pennsylvania, eastern district, M., 1811.—58.

SIMON GRATZ et al., adm's, &c., of Michael Gratz, dec'd,
vs.
LEAH PHILLIPS, surviving ex'x, &c., of Jos. Simon, dec'd.

The deaths of Levi Phillips and Beliah Cohen suggested.

And the auditors, so appointed as aforesaid, having heretofore assigned divers days and terms for taking the acct. of the defendants, but the same not being then taken, assign the day of March, 1833, to take the acct. of the surviving defendant; it being shown to us that the deaths of the other two defendants, L. Phillips and Beliah Cohen, were suggested on the record; on which said day of March, 1833, came the parties aforesaid, and before the auditors.

And the auditors here bring into court the account of Leah Phillips, the surviving defendant and executrix of the last will and testament of Joseph Simon, deceased, the tenor whereof is as follows:

The account of Leah Phillips, surviving defendant and executrix of the last will and testament of Joseph Simon, deceased, of and concerning the sum of one hundred pounds, being the one-half of two hundred pounds and six pence, concerning which the executors of the said Joseph Simon, deceased, were adjudged to render an account herein, specifying the various sums received, and the times at which the said one hundred pounds and the interest accruing thereon were received by the said Joseph Simon in his lifetime, and also the interest due on such receipts to the time of rendering this account.

1790.—July 14.	Cash received by J. Simon	£10	7	0	$27	70
	Int. thereon to Mar. 28, 1833				70	90
Sept. 2.	Cash received by J. Simon	37	10	0	100	00
	Int. thereon to Mar. 28, 1833				255	20
1791.—Oct. 6.	Cash received by J. Simon	48	15	0	130	00
	Int. thereon to Mar. 28, 1833				323	30
1792.—Aug. 8.	Cash received by J. Simon	6	00	0	16	00
	Interest thereon				39	00
Nov. 1.	Cash received by J. Simon	16	7	6		
	Balance of £100 and interest	6	10	0		
		£22	17	6	62	63
	Int. thereon to Mar. 28, 1833				151	00
	LEAH PHILLIPS,					
	Surviving defendant and executrix of the last will and testament of Joseph Simon, deceased.				$1,175	43

Philadelphia, March 28th, 1833.

Witness: JOHN MOSS,
LYON JOSEPH LEVY.

And the auditors report the said account of the said Leah Phillips,

surviving executrix as aforesaid, before so made them, and do further report and award that there is due from the estate of Joseph Simon, deceased, and from the said executrix of the said Joseph Simon, deceased, to the plaintiffs, the sum of eleven hundred and seventy-five dollars and forty-three cents, on the 28th March, 1833, according to the foregoing account, signed by the said accountant, and interest thereon from the 28th day of March, 1833.

Eo. die, by writing filed, it is agreed that the children of Bell Cohen deceased, suggest on the record their interest in the estate of Joseph Simon, deceased, and that they may take defence in this action, in the name of the surviving executrix. Afterwards, to wit, January 13th, 1834, on motion of John Purdon, esq., rule to show cause why an auditor should not be appointed in the room of Joshua Percival, deceased; rule argued on the twentieth, twenty-third, and thirtieth day of January, and held under advisement by the court.

STATE OF PENNSYLVANIA, *Philadelphia county, ss.*

I, F. W. Hindman, prothonotary of the supreme court of the eastern district of Pennsylvania, do certify, that the foregoing contains [L. S.] a true copy of the record of the action therein mentioned, as full and entire as the original remains of record in the same court. In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court, this fifteenth day of January, anno domini one thousand eight hundred and thirty-nine.

F. W. HINDMAN, *Proth'y.*

EASTERN DISTRICT OF PENNSYLVANIA, *ss.*

I, the honorable John Bannister Gibson, chief justice of the supreme court of the Commonwealth of Pennsylvania, do certify, that the foregoing record and attestation, made by Francis W. Hindman, esq., late prothonotary of the said supreme court of the Commonwealth of Pennsylvania, whose name is thereto subscribed, and seal of said court affixed, are in due form and made by the proper officer.

In testimony whereof, I have hereunto set my hand the first day of May, one thousand eight hundred and forty-one.

JOHN B. GIBSON.

F.

In the court of common pleas of Lancaster county.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, adm'rs of Michael Gratz, dec'd, } Norris Montgomery.

vs.

LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors of Joseph Simon, deceased. } Rogers Cohen, H. Rogers.

January term, 1822, No. 163.—Amicable action on the case entered January 30th, 1822, and by an agreement filed in writing, all matters in dispute between the parties are referred to Casper Shaffner, jr., John Reynolds, and Joseph Ogilby, or a majority of them, to meet in the house of Col. Jacob Slough, in the city of Lancaster, at any time the parties shall agree upon,

Costs	$16 79
Add'l costs	3 50
	$20 29

upon thirty days notice, and to make their award into the prothonotary's office, with power to adjourn from time to time until the cause shall be decided; the referees to have no power in relation to any lands remaining unsold previous to entering this action, and that the award shall be final.

August 10th, 1822, report of arbitrators filed; finding for the plaintiffs $2,867 84, agreeably to the calculations annexed to the report filed, subject to the opinion of the court on the legal points of defence submitted by the defendants; and the replication of the plaintiffs thereto filed, with the award; same day, judgment nisi; August 12, 1822, exceptions to the report filed.

Copy of docket entries.

March 25th, 1833, Mr. Hopkins, on motion and affidavit filed, moves the court for a rule to show cause why Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Abraham M. Cohen, Elkalah M. Cohen, Samuel M. Cohen, Joseph S. Cohen, and Eleazar L. Cohen, children of Bilah Cohen, and interested in the estate of Joseph Simon under his last will and testament, should not be permitted to come in and take defence of the above action, and show cause why the exceptions to the award should not be sustained, notwithstanding an alleged special power of attorney from Leah Phillips, surviving executrix of the said Joseph Simon, to B. Champneys, esq., authorizing him to enter judgment for the plaintiffs.

In the court of common pleas of Lancaster county.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, adm'rs of Michael Gratz, dec'd, vs. LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors of Joseph Simon, dec'd. } Case.

Amicable action in the common pleas of Lancaster county, of January term, 1822.

We agree that the above action on the case be entered in the common pleas of Lancaster county, of the term of January, 1822, and we do refer all matters in variance between the parties to Casper Shaffner, jr., John Reynolds, and Joseph Ogilby, or a majority of them, to meet at the house of Col. Jacob Slough, in the city of Lancaster, at any time the parties shall agree upon, upon thirty days notice, and to make their award into the prothonotary's office, with power to adjourn from time to time until the cause shall be decided; and it is understood that the referees shall have no power in relation to any land remaining unsold previous to the entering of this action, and that the award shall be final.

SIMON GRATZ,
One of the adm'rs of Michael Gratz, dec'd,
MOLTON C. ROGERS, *Attorney for defendant,*
LEVI PHILLIPS, *Ex'r of Joseph Simon, dec'd,*
J. SIMON COHEN, *Attorney for defendant.*
WM. MORRIS, *Attorney, P. Q.*

163.—January term, 1822, (endorsed.)

Agreement filed January 30th, 1822.

GRATZ'S adm'rs. }
vs.
SIMON'S ex'rs. }

In the common pleas of Lancaster county, of January term, 1822.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, adm'rs of Michael Gratz, deceased,
vs.
LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors of Joseph Simon, deceased. } No. 163.

Amicable action of the case, entered January 30th, 1822, and by agreement, filed in writing, all matters in variance between the parties are referred to Casper Shaffner, jr., John Reynolds, and Joseph Ogilby, or a majority of them, to meet at the house of Col. Jacob Slaugh, in the city of Lancaster, at any time the parties shall agree upon, upon thirty days notice, and to make their award into the prothonotary's office, with power to adjourn from time to time until the cause shall be decided; the referees to have no power in relation to any lands remaining unsold previous to entering to this action, and that the award shall be final.

Attest: For F. A. MUHLENBURG, *Proth.*,
CHRIST'N BACHMAN.

Thursday, May 30, 1822, arbitrators met at 10 o'clock, A. M., at the house of Col. Jacob Slaugh, and adjourned to meet at the same place at any time the parties shall agree upon.

Thursday, June 13th, 1822, arbitrators met, agreeably to notice given them by the parties; and, being severally sworn or affirmed, according to law, and at the request of the parties, adjourned to meet on Monday, the 17th day of June inst., at 9 o'clock, A. M., at the house of Col. Jacob Slaugh.

Monday, June 17th, 1822, arbitrators met, agreeably to adjourment; and, after making considerable progress, adjourned to meet to-morrow morning, at 9 o'clock, at Col. Jacob Slaugh's.

Tuesday, June 18th, 1822, arbitrators met, agreeably to adjournment; and, after making some progress, adjourned to meet on Thursday, the 20th inst., at 9 o'clock, A. M., at Col. Slaugh's.

Thursday, June 20th, 1822, arbitrators met, agreeably to adjournment, and adjourned to meet to-morrow morning, (Friday, 21st inst.,) at 9 o'clock, at Col. Slaugh's.

Friday, June 21st, 1822, arbitrators met, agreeably to adjournment, and adjourned to meet on Monday, 24th inst., at 9 o'clock, A. M., at Col. Slough's.

Monday, June 24th, 1822, arbitrators met, agreeably to adjournment, and adjourned to meet on Tuesday, the 25th inst., at 10 o'clock, A. M., at Col. Slough's.

Tuesday, June 25th, 1822, arbitrators met, agreeably to adjournment, and adjourned to meet on Wednesday, 26th inst., at 2 o'clock, at Col. Slaugh's.

Wednesday, June 26th, 1822, arbitrators met, agreeably to adjournment, and adjourned to meet on Thursday, the 27th instant, at 10 o'clock, A. M., at Col. Slough's.

Thursday, June 27th, 1822, arbitrators met and adjourned to meet on Friday, 28th inst., at 10 o'clock, A. M., at Col. Slough's.

Friday, June 28th, 1822, arbitrators then met, and adjourned to meet on Tuesday, the 2d July next, at 9 o'clock, A. M., at Col. Slough's.

Tuesday, July 2d, 1822, arbitrators then met, and adjourned to meet on Tuesday, the 16th inst., at 10 o'clock, A. M., at Col. Jacob Slough's.

Tuesday, July 16th, 1822, arbitrators then met, pursuant to adjournment, and adjourned until to-morrow, (17th instant,) at 10 o'clock, A. M., at Col. Slough's.

Wednesday, July 17th, 1822, arbitrators met, and adjourned to meet on Friday, the 19th inst., at 7 o'clock in the morning, at Col. Slough's.

Friday, July 19th, 1822, arbitrators met, and adjourned until Tuesday, the 23d inst., at 10 o'clock, A. M., at Col. Slough's.

Tuesday, July 23d, 1822, arbitrators met, and adjourned until to-morrow (Wednesday) the 24th instant, at 10 o'clock, A. M., at Col. Slaugh's.

Wednesday, July 24th, 1822, arbitrators met, and adjourned till to-morrow (Thursday) 25th instant, at 10 o'clock, A. M., at Col. Slaugh's.

Thursday, July 25th, [1822,] arbitrators met, and adjourned to meet on Wednesday, 31st inst., at 10 o'clock, A. M., at Col. Slaugh's.

Wednesday, July 31st, 1822, arbitrators met, and adjourned till to-morrow (Thursday, August 1st,) at 8 o'clock, A. M., at Col. Slaugh's.

Thursday, August 1st, 1822, arbitrators met, and adjourned till to-morrow (Friday) August 2, at 9½ o'clock, A. M., at Col. Slaugh's.

Friday, August 2d, 1822, arbitrators met, and adjourned until to-morrow, (Saturday,) August 3d, at 10 o'clock, A. M., at Col. Slaugh's.

Saturday, August 3d, 1822, arbitrators met, and adjourned until Monday, August 8th, at 5 o'clock, A. M., at Col. Slaugh's.

Monday, August 5th, 1822, arbitrators met at 5 o'clock, A. M., and adjourned to meet on Tuesday, August 6th, at 3 o'clock, P. M., at Col. Slaugh's.

Tuesday, August 6th, 1822, arbitrators met, and adjourned to meet to-morrow, (Wednesday,) August 7th, at 3 o'clock, P. M., at Colonel Slaugh's.

Wednesday, August 7th, arbitrators met, and adjourned till to-morrow, (Thursday,) August 8th, at 10 o'clock, A. M., at Col. Slaugh's.

Thursday, August 8th, 1822, the arbitrators met, pursuant to adjournment, and report, that after an attentive hearing of the parties, their proofs and allegations, and after a careful examination of the evidence submitted to them, do now find for the plaintiffs the sum of two thousand nine hundred and eighty-seven dollars eighty-four cents, for the reasons and agreeably to the calculations annexed on a paper mark-

ed B; which the arbitrators desire may be considered as part of this award, as if the same had been incorporated therein, subject to the opinion of the court on the legal points of defence, submitted by the defendants, and replication of the plaintiffs thereto (filed herewith.)

CASPER SHAFFNER, Jr.
JNO. REYNOLDS.
JOS. OGILBY.

$75 paid by pl'ffs to arbitrators.

163.—January term, 1832.

MICHAEL GRATZ'S administrators,
vs.
JOSEPH SIMON'S executors.

Rule of reference.

Report filed, August 10th, 1822. 53 yrs.

Dr.—Joseph Simon, deceased, his account current with Simons, Levy, Trent and Co.

1769.—Jan'y 4.—To your one-fourth of the loss, the whole, being				£9,424	17 11
One-fourth is				2,356	4 0
				£	s. d.
Cr.—By amount due you per settlement this day				1,316	4 0
Balance per contra				1,040	0 0
				2,356	4 0
Dr.—To balance per contra				£1,040	0 0
Interest to July, 1822, is 53 years 6 months				3,338	8 0
1810.—Oct. 1.—Amount received by you of W. Trent on account of his bond and mortgage, as per account of auditors		$13,893	62		
Assigned or awarded to D. Franks' representatives		12,169	94		
Do. to Joseph Simons		1,723	08		
	£646	3	1		
Interest to July, 1822, is 11 years 9 months		455	7	8½	
		£1,101	10	9½	

This charge is not admitted. For reasons, see papers marked B, and hereunto annexed.

1788, Sept.—To amount received by you from sheriff of Cumberland county, being proceeds sales [of] house and lots in Carlisle	£200	0	6			
Interest to July, 1822, is 33 years 10 months	406	0	0			
	£606	0	6			
One-half is				£303	0	3
1790.—July.—To amount sales of land by sheriff of Northumberland county, on judgment upon mortgage of W. Trent	£1,439	3	11			
One-half	£719	11	11½			
Interest to July, 1822, 32 years	1,381	8	4			
	£2,101	1	3½			

This charge is not admitted by the arbitrators. For reasons, see paper marked B.

1769.—March 1.—To cash received of George Croyhen on account of John Meanor				£54	10	0
Interest to July, 1822, is 53 years 4 months				174	8	0
1777.—March 1.—To cash received of William Ferguson, for his assumption of Byerly's debt				69	5	1½
Interest to July, 1822, 53 years 4 months				220	19	4½
1778.—April 1.—To John Gibson's bond and interest	£75	8	8			
Scale of depreciation 6 for 1 is				12	11	5
Interest to July, 1822, 34 years 4 months				25	17	10
				£5,238	19	11¾

Cr.—1769.—Jan'y 23.—By amount paid John Dow Cash—search at Philadelphia for survey of Michael Teafer				£24	8	0
					4	6
Interest on £24 12s. 6d. to July 22, is 53 years 6 months				79	0	5½
March 6.—Paid N. Waln for drawing two powers of attorney to go to P. Boyle at Detroit				1	0	0
1769.—March 6.—Cash paid George Croghen				229	17	0
Interest on 230 17 to July, 1822, is 53 years 3 months				737	10	3½
Sept 26.—Cash paid W. Thompson for surveying 4 tracts of land, 9 mile run from Fort Pitt	£17	10	0			
Sundry expenses for the same	2	12	6			
				20	2	6

Interest to July, 1822, is 53 years 10 months - -				£63	15 08
1776.—May 29.—Cash paid Richard Hockley at times past—principal and interest on bonds - - -				758	4 0
Interest to July, 1822, 46 years 2 months - - -				2,100	3 4
Sept. 26.—Cash paid J. Wharton, on account [of] P. Boyle, towards expenses in Indiana company -				5	5 0
Interest to July, 1822, 45 years 10 months - -				14	8 3½
1779.—April 26.—Cash paid William Trent, at Philadelphia, at a meeting of the Indiana company, account P. Boyle, £29 5, at 17 for 1, is - - - -	£1	14	10		
Sept. 3.—Do., do., £29 5, at 24 for 1 -	1	4	4		
Sept. 30.—Do. paid Richard Hockley on bond and interest, £487 10 4, or 24 for 1 - - - - - - - -	20	6	3		
				23	5 5¾
Interest to July, 1822, is 43 years - - - -				60	0 5
1782.—Jan. 1.—Paid George Mayer, for P. Boyle, Indiana company - - - - -				2	17 3
Interest to July, 1822, is 40 years 6 months - -				6	18 4
Balance per contra - - - - - - - -				1,111	18 10
				£5,238	19 11¾

To balance per contra, £1,111 18 10, or *dollars* $2,967 $\frac{84}{100}$.

Lancaster, August 8, 1822.

CASPER SHAFFNER, JR.,
JOHN REYNOLDS,
JOS. OGILBY.

B.

Common pleas of Lancaster county, January term, 1822.

Administrators of MICHAEL GRATZ
vs.
Executors of JOS. SIMON. } No. 163.

In this suit plaintiffs demand of defendants Joseph Simon's proportion of the loss sustained by the firm of Levy, Simon, Trent & Franks. From the settlement of the accounts of this partnership, made by themselves on the 4th January, 1769, it appears that the firm was indebted

to David Franks - - - - - - -			£9,294	10 7
To Joseph Simon - - - - - - -			1,316	4 0
			£10,610	14 7
William Trent was indebted to the firm - -			1,185	16 8
			£9,424	17 11

This sum of £9,424 17 11 appears to have been the total amount of loss sustained by the company, and was divided equally among the four partners as that proportion, to wit, one-fourth was included in the bond and mortgage taken from Trent, to whom Levy Andrew Levy was to account, or whether he accounted all, does not appear.

William Trent was indebted to the firm, as above stated	£1,185	16	8
His one-fourth amount loss	2,356	4	5¼
	£3,542	1	1¾
Three years' interest then due on this sum	540	0	0
	£4,082	1	1¾

For which amount, dropping the 1 1¾, he gave a bond and mortgage to David Franks and Joseph Simon.

Joseph Simon's proportion of loss	£2,356	4	5¼
Deduct amount due him by company	1,316	4	0
	£1,040	0	5¼

For this amount, £1,040 0 5¼, Joseph Simon was a debtor, on the 4th January, 1769, to David Franks, as the creditor partner of the firm.

And due David Franks by the company	£9,294	10	7
Deduct his proportion of the loss	2,356	4	5½
	£6,938	6	1½

D. Franks, as the only co-partner, would therefore have been entitled to have received the amount due to the firm by J. Simon	£1,040	0	5¼
And the whole amount of Trent's bond and mortgage	4,082	0	0
	£5,122	0	5¼
	£1,816	5	7½

David Franks would then have been a loser to the amount of £1,816 5 7½; but if he were to bear Levy's proportion of loss, who, it is said, was unable to pay, he would have been overpaid £540, the amount of interest paid by Trent; if the half of Levi's loss, Franks would have been loser upon £638 3 4¾.

From the statement made by the parties in 1769, J. Simon was not entitled to have received any part of the proceeds of the land conveyed by William Trent until the debt due D. Franks, and the interest thereon, was paid; the balance then, if any, ought to have been equally divided among Franks, Simon, and Trent.

The first item of demand in plaintiff's account is for £1,040 due the firm of of Levy, Trent & Co., in 1769, by Joseph Simon.

The charge, from the foregoing statement, appears to be correct, and is admitted.

The 2d item of plaintiff's demand is for amount received by Jos. Simon of W. Trent, on account of his bond and mortgage, as per account of auditors in 1810.

Amount awarded D. Franks - - - - -	$12,169 94
Jos. Simon - - - - -	1,723 08
	$13,893 02

The amount of $1,723 08, with interest for 11 years and 9 months.

This charge the arbitrators cannot admit, as David Franks has declared, in his assignment of 18th March, 1790, to Bernard and Michael Gratz, *and Michael Gratz*, and in his order on Joseph Simon, of same date, has admitted, for what reasons we know not, that Joseph Simon was entitled to one-half William Trent's bond and mortgage. The apportionment of the proceeds of sales of lands acquired under the mortgage by auditors in 1810, was, in our opinion, manifestly wrong, as David Franks, after his declaration and admission above mentioned, could not have been entitled to more than one-half of the proceeds of said sales; the charge, therefore, for this balance of $1,723 08, with interest, is rejected.

The 3d item of demand is for a half of the amount received from [the] sheriff of Cumberland county, proceeds of sale of the house and lots in Carlisle, amounting, with interest, to £303 0 3. This amount has not yet been accounted for by defendants, and is admitted by arbitrators.

The 4th item of demand is for £719 11 11, being one-half of nett proceeds of sales of lands upon Trent's mortgage by sheriff of Northumberland county, and interest thereon, and this charge is not admitted, because Simon and Franks were equally interested in the mortgage under which the lands were sold, and were joint purchasers of the said land.

The remaining items of debit and credit are taken from the leger of Joseph Simon, being entries since the settlement of 1769.

In this suit also the plaintiffs claim the amount arising from the sale of lands in Dauphin county, made to Harman and Shellman by Joseph Simon on the 9th August, 1787, by virtue of a power of attorney from David Franks to said Simon, dated

David Franks conveyed all his estate, real and personal, to Tench and Isaac Hazlehurst, trustees of Amos Hayton and his creditors, on the 26th March, 1786, which assignment was acknowledged on the 8th February, 1787, and recorded on the 21st February of the same year, some months previous to the sale by Simon, by virtue of this power of attorney. This property, therefore, vested in Coxe and Hazlehurst by virtue of the assignment of 26th March, 1786.

The asignments from Franks, Coxe, and Hazlehurst to Davis, from Davis to Simon Gratz, and from Simon Gratz to Michael Gratz, conveys only the debts and personal estate of David Franks to plaintiff; therefore, cannot be entitled to the amount arising from the sale of these lands. The claim is therefore not admitted.

LANCASTER, *August 8th*, 1822.

CASPER SHAFFNER, JR.,
JOHN REYNOLDS,
JOS. OGILBY.

The administrators of M. GRATZ
vs.
The executors of JOS. SIMON.

Amicable action in case.

The points of defence submitted to the arbitrators in the above case on the part of the defendant.

1st. That the plaintiffs are not the representatives of David Franks, and have not the right to maintain this suit.

2d. That this suit should have been brought in the name of David Franks, his executors or administrators, for the use of the executors of M. Gratz. That the accounts of the partnership between Franks, Levy, Trent, and Simons, are not within the submission. 1 Smith, 90. 1 Dol. 268.

3d. That the suit should have been brought against Levy A. Levy, the surviving partner, and Levy A. Levy, the surviving partner, is bound to collect the moneys belonging to the company, to pay their debts, and make distribution among those who may be entitled. 2 Johns. 6 H., 508. 1 Caine, 6 in error, 122. 1 Gal., 371, 630. Watson, part 455, 452, 386. 1 Dall., 250. 2 Dal., 65, in note. Taylor, N. C. R., 124.

4th. That plaintiffs are barred by the statute of limitations. 4 Bacon, 478. 2 John., 200. 1 Con. D., 205, 222. 15 Johns., 511.

5th. That from the lapse of time, which has accrued from the dissolution of the partnership and the settlement of their accounts, the law will presume payment, and that the evidence of that payment may be mislaid or lost. 2 Van., 21. 2 Atkins, 178. 3 Atkins, 105, 13, vig., 491.

6th. That an action on the case cannot be sustained unless there has been a settlement and an express promise to pay the balance.

7th. That if the plaintiff attempted to recover, or could have recovered in the account render of 1810, it is a bar to any recovery again, on the ground that Franks was a greater creditor of the firm than J. Simon. Watts, 396. 2 N. Y. Camer. R., 293.

8th. That by the instrument of writing, dated 26th July, 1802, J. Simon has been indemnified by plaintiffs against this claim, and that therefore plaintiffs cannot recover in this suit.

9th. That the books of David Franks are not evidence for the cash charges, unless supported by other vouchers.

Lancaster. MOLTON C. ROGERS,
Attorney for defendants.

M. GRATZ'S administrators } Amicable action.
vs.
J. SIMON'S executors. }

Answer by plaintiffs to the points submitted by the defendants in this cause.

Point No. 1. The plaintiffs answer that they are the representatives of D. Franks, and have a right to maintain this suit, for the following reasons:

1st. Because the defendants have by their submission submitted to the arbitrators the settlement of every civil controversy known to the laws of Pennsylvania, embracing both matters of law and equity; that the submission and reference are under the law of 1705, and the arbitrators have no limit to their inquiries but that which the claims of the several parties of justice prescribe; that under a general submission of this kind, they may hear and decide upon one or ten distinct causes of action vested in the plaintiffs at the time of the submission, and alleged by him on the trial as a matter of controversy in the case; that a husband may recover on a submission a right due to himself, and another due to his wife, without the wife joining as a party to the submission; so of an executor who may recover a right due to himself and another due to his testator, by suit and submission in his own name. That the attorney of B, who is empowered by B to collect debts due to B from C, may submit the decision of the right to the money with C to arbitrators, and on a submission of this kind the arbitrators may award the money due from C to B to be paid to A, and A may recover it in a suit at law in his own name. That, in fine, the only question here is—will the award made in favor of the plaintiffs for the money due by J. Simon to D. Franks discharge the estate of Jos. Simon from all present and future claims on the part of D. Franks or his representatives? Kyd. on Awards, (note 1,) page 34. 1 Call's reports, 583. Kyd., 34. Kyd., 149. 8 Term reports, 571. Kyd., 46. 2 Johns., 509. 1 Dale, 211. That whatsoever may be set off by a defendant in a suit at law brought for a specific thing, may be recovered in equity, and of course under this submission, and this has been the law and practice in Pennsylvania in this sort of reference for the last hundred years. 3 Binney, 135.

Point 2. The answer to the first point answers this.

Point 3. The plaintiffs, say the defendants, by their submission and the terms of it, have waived every technical objection of this kind. That the submission absolutely admits that the parties to this suit are the proper parties, and the reference is, by the letter and spirit of the submission, a reference of every civil controversy existing in law or equity between the representatives of D. Franks and J. Simon. That the arbitrators under this submission might award money due on a book account from J. Simon to D. Franks, and money due from J. Simon to M. Gratz. Kyd., 46; 3d Binney, 135; 8 T. Rep., 571; 2 Bos. & Pul., 268. That L. A. Levy was a partner in the firm to share in the profits of

it, but was not accountable for its losses, as appears from the acts and declarations of the parties, witnessed by the papers made on the fourth of January, 1769. That the benevolence of D. Franks and J. Simon, to Mr. Levy, made him a partner in 1760, and the same benevolence discharged him, when he ceased to be a partner in 1769. That the paper called the declaration of trust, signed and sealed by J. Simon, on the 4th of January, 1769, and witnessed by L. A. Levy, as a stranger to the company, proves that he was discharged and nothing more than L. A. Levy, a stranger to the firm.

That the known want of fortune of Mr. Levy, in 1769, and ever since, confirms this position.

Point 4. In answer to this the plaintiffs say, that they are not barred by the statute of limitations, for that merchants' accounts are excepted by the statute, and that the claims of the plaintiffs fall under this denomination. That if the demand of the plaintiffs were barred by the statute of limitations, the defendants, by their submission, have waived the benefit of it, and every other technical objection.

Point 5. The plaintiff's answer to this point is, first, a denial of the fact of the dissolution of the partnership, and a settlement of the accounts concerning it, the partnership, for the purpose of winding up the affairs and settling the accounts of J. Simon and D. Franks, the parties remaining after the transaction of 4th January, 1769, is in existence to this day; and this is proved by the paper of figures and the declaration of trust of J. Simon, of the 4th January, 1769; by the bond and mortgage, and the fund assigned by the mortgage, going into the hands of J. Simon, as trustee for the company, for the use of D. Franks, by the deed of 26th April, 1779, from William Trent to Joseph Simon, assigning for the same uses 14 tracts of land, containing 3,516 acres, as an auxiliary fund for the payment of his dues to the company, for the use of D. Franks.

By the entries of the book of J. Simon, from 1769 till 1782, charging the company with the sum of about £3,440, paid by him on account of it; by the pursuit of the mortgage fund by J. Simon, by suing out the mortgage and selling property under it in 1788 and 1790. By the deeds made by J. Simon and S. Gratz, on the 26th July, 1802; by the entries in the books of J. Simon, made by L. A. Levy, in August, 1802, in 1807, and in the summer of 1810; by an item in the charges of 1802, of money paid by J. Simon to W. Armstrong and R. Lea, for the firm of Franks, Trent & Simon, omitting the name of L. A. Levy; by the production of the paper of figures of the 4th January, 1769, by L. Phillips, in the trial of the cause in the supreme court in 1810, as evidence in chief in his defence, and the reception of that paper and its going to jury under the sanction of the court, and by L. Phillips concealing that paper ever since.

Point 6th. In answer to this, plaintiffs say they may recover all matters to which their claims in justice extend; and the form of action is totally out of the question, for all the reasons before given.

Point 7. To this point the plaintiffs answer, that the record and de-

claration in suit, tried in 1810, exhibit a precise cause of action, calling upon J. Simon's representatives to account for a certain share of the nett proceeds of sales of specific tracts of land, and that beyond this plaintiffs could not recover in that action. That all the rest of the partnership estate was purposely left open for settlement, by an amicable reference. That when the suit was brought in 1807, and the declaration filed, the plaintiffs were not aware of the extent of their rights; it was not till February, 1810, on the trial of the cause, that L. Phillips made the discovery.

Point 8. The plaintiffs answer this by referring to the papers of 1802. They contain a promise, on the part of J. Simon, to pay to his grandchildren all the moneys due by him to D. Franks, and the award in this case, if in favor of the plaintiffs, will be a complete indemnity to J. Simon against all claims on the part of D. Franks, for the reasons stated in the argument this morning.

Point 9. Plaintiffs answer this by referring to books of J. Simon, as an admission of all the items contained in the account of D. Franks, and that the books of D. Franks, as a copartner of D. Simon, are, in law, evidence against J. Simon—4 Fleming and Munford, 363.

W. MORRIS, *Att'y, P. Q.*
JOHN R. MONTGOMERY, *P. Q.*

August 5, 1822.

In the court of common pleas of Lancaster county, January term, 1822.—No. 163.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased,
vs.
LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, administrators of Joseph Simon, deceased.
} Case.

Amicable action—Sur report of referees.

The defendants object to the report of referees, for the following reasons:

1. That the plaintiffs are not the representatives of David Franks, and have not the right to maintain this suit.

2. That this suit should not have been brought in the name of David Franks, his executors or administrators, for the use of the administrators of Michael Gratz; that the accounts of the partnership of Franks, Levy, Trent, and Simon are not within the submission.

3. That the suit should have been brought against Levy Andrew Levy, the surviving partner, and that Levy Andrew Levy, being the surviving partner, is bound to collect the moneys belonging to the company, to pay their debts, and make distribution among those who may be entitled.

4. That the plaintiffs are barred by the act of limitations.

5th. That from the lapse of time which has accrued from the dissolution of the partnership, and the settlement of their accounts, the law will presume payment, and that the evidence of that payment may be mislaid or lost.

6. That an action of the case cannot be sustained unless there has been a settlement, and an express promise to pay the balance.

7. That if the plaintiffs attempted to recover, or could have recovered, in the action of account *render* between the same parties in the supreme court of the eastern district of Pennsylvania, of term, 1807, it is a bar to any recovery again on the ground that Franks was a greater creditor of the firm than Joseph Simon.

8. That by the instrument of writing dated 26th July, 1802, Joseph Simon has been indemnified against this claim, and that, therefore, plaintiffs cannot recover in this suit.

9. That the books of David Franks are not evidence of the cash charges, unless supported by other vouchers.

10. The referees erred in charging the defendants with £303 0 3, the *the* amount of principal and interest, the proceeds of the sale of the house and lots in Carlisle.

11. That the referees have erred in crediting Joseph Simon with £487 10 4 as continental money, and also the two sums of £29 5 paid to P. Boyle, credited as continental money.

12. That the referees have erred in crediting Joseph Simon with £487 10 4, as of the 30th September, 1779, when from the leger of J. Simon, to which they refer, it appears that the sum of 487 10 2 was paid by Joseph Simon on the first August, 1777.

13. That the referees have erred in not allowing a credit for $725 $\frac{66}{100}$, the nett proceeds of a tract in the name of William Trent, sold in 1795, and for which the estate was charged in an account in 1805, between the plaintiffs, intestate, and B. Cohen, one of executors of the estate of Jos. Simon, which said charge was made by mistake.

14. That the referees have erred in not allowing to the defendants the amount which the plaintiffs have received over and above the moiety of the bond and mortgage of 1769, from William Trent to Jos. Simon and David Franks.

15. That the referees have erred in charging upon the several items of the account.

16. That the award is not final.

17. That the referees have no power to submit the matters of law to the decision of the court, but are bound to decide them.

18. That manifest injustice has been done to the defendants, and that the referees have made clear and manifest errors in matters of law and fact.

MOLTON C. ROGERS, *P. Q.*

Personally appears before me, the subscriber, one of the aldermen of the city of Lancaster, Levi Phillips, who being duly sworn, doth say, that the exceptions as above stated are just and true, according to the best of his knowledge and belief.

LEVI PHILIPS.

Sworn and subscribed before me, Aug. 12th, 1822.

D. MOORE.

163.—January term, 1822, (endorsed.)

Exceptions to report of referees, filed August 12th, 1822.

GRATZ'S adm'rs
vs.
SIMON'S ex'rs.

In the common pleas of Lancaster county, of the term of Jan., 1822.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, adm'rs of Michael Gratz, deceased,
vs.
LEVY PHILLIPS, Leah Phillips, and Beliah Cohen, ex'rs of Jos. Simon, dec'd.
No. 163.

Joseph S. Cohen, being duly sworn, saith, that he was one of the attorneys of the defendants in the above case; that he firmly believes he and Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, Samuel M. Cohen, and Eleazar L. Cohen, children of Beliah Cohen, deceased, are interested in the estate of the late Joseph Simon, deceased, under his last will and testament; that Levi Phillips, one of the executors, died on or about the 15th January, 1832, and Beliah Cohen, another executrix of the said Joseph Simon, departed this life on the 29th day of January, 1833; that the special power of attorney to B. Champneys, esq., was executed by Leah Phillips, surviving executrix, without the knowledge and consent of this deponent, and as he firmly believes without the knowledge and consent of the said Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, Samuel M. Cohen, and Eleazar L. Cohen; that the first knowledge of the same was obtained by him on the 23d instant, at Lancaster, when he arrived from Harrisburg, on the evening of the 22d instant, to make arrangements for the trial or continuance of a cause of Simon's executors vs. Gratz's administrators, on the trial list of the circuit court for the eighth of April next; that he attended to the business of his late mother, and believes no communication between her and the executrix, Leah Phillips, or between her and any of the plaintiffs, took place with a view to such a disposition of the cause as is now sought for under the power of attorney; that if any communication had taken place with his late mother, he firmly believes he would have been apprized of it; that Mrs. Leah Phillips is advanced in age, and her sight so much impaired as to prevent her reading written documents; that this deponent had no expectation of the case being now disposed of in any way, and is necessarily absent from home, and without his books and papers; that if the judgment be rendered, it will materially impair the interest of himself and his brothers and sisters

before mentioned; that he believes many of the exceptions to the award are valid in law and fact.

J. SIMON COHEN.

Affidavit filed March 25, 1833.

(Endorsed) GRATZ's adm'rs vs. SIMON ex'rs.

Sworn and subscribed before me, this 25th March, A. D. 1833.

SAML. DALE,
Alderman of Lancaster city.

(163.)—Jan. term, 1822.

In the court of common pleas of Lancaster county, January term, 1822.—No. 163.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, adm'rs of Michael Gratz, deceased,
vs.
LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, ex'rs of Joseph Simon, deceased.

Amicable action on the case. And now, March 25th, 1833, Mr. Hopkins, on motion and affidavit filed, moves the court for a rule to show cause why Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, Samuel M. Cohen, Joseph S. Cohen, and Eleazar L. Cohen, children of Beliah Cohen, and interested in the estate of Joseph Simon, under the last will and testament of Joseph Simon, should not be permitted to come in and take defence in the above action, and show cause why the exceptions to the award should not be sustained, notwithstanding an alleged special power of attorney from Leah Phillips, surviving executrix of the said Joseph Simon, to Benjamin Champneys, esq., authorizing him to enter judgment for the plaintiffs.

Attest: CHRIST'N BACKMAN, *Prothonotary.*

PHILADELPHIA CITY, *ss:*

Before me, the subscriber, an alderman for the said city, this third day of May, A. D. 1833, came Thomas Cooper, who being duly affirmed saith, that on the twenty-ninth day of April last past, he served a copy of the within rule on Mrs. Leah Phillips, personally.

THOS. COOPER.

Affirmed and subscribed before me. JOHN BINNS, *Alderman.*

PHILADELPHIA CITY, *ss:*

Before me, one of the aldermen of the said city, appeared Thomas Cooper, who being duly affirmed saith, that he served the within rule on the 6th day of June, 1833, on Joseph Gratz and Jacob Gratz, by leaving a copy at their residence; and on the seventh June personally on Simon Gratz.

THOS. COOPER.

Affirmed and subscribed before me, the 15th June, 1833.

MICHAEL ASH, *Alderman.*

163.—January term.—1822.—*Rule.*

STATE OF PENNSYLVANIA, *Lancaster county, ss:*

I, Z. McLenegan, prothonotary of the court of common pleas of said county of Lancaster, certify, that the foregoing contains a true [L. S.] copy of the record of the case therein stated, so full and entire as the original remaining of record and on file in the office of the said court.

In testimony whereof I have hereunto set the seal of the said court, and subscribed my name, at Lancaster, the ninth day of November, A. D. 1838.

Z. McLENEGAN, *Prothonotary.*

LANCASTER COUNTY, *ss:*

I, Benjamin Champneys, esquire, president of the court of common pleas of the county of Lancaster, do certify, that the foregoing record and attestation, made by Zephaniah McLenegan, esq., prothonotary of the said court, whose name is thereto subscribed, and seal of office affixed, are in due form, and made by the proper officer.

In testimony whereof I have hereto set my hand the third day of May, 1841. B. CHAMPNEYS.

LANCASTER COUNTY, *ss:*

I, Zephaniah McLenegan, prothonotary of the court of common pleas of Lancaster county, do certify, that the honorable Ben- [L. S.] jamin Champneys, esq., by whom the foregoing attestation is made, whose name is thereto subscribed, was at the time of making thereof, and still is, president judge of the said court, duly commissioned and sworn; to all whose acts as such full faith and credit are and ought to be given, as well in courts of justice as elsewhere.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said court, the third day of May, 1841.

Z. McLENEGAN, *Prothon'ry.*

G.

In the district court for the city and county of Lancaster.

LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors of Joseph Simon, deceased,

vs.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased.

(Copy of appearance docket.) June term, 1826, No. 276. Cap., in covenant, no bail required. Issued August 16, 1824. Served by copy of Jacob Gratz. N. E. J. as to the rest. (Nar. filed.)

November 3, 1827, defendants pray oyer of the deed in the declaration mentioned, and plead non impegerunt conventionem, and covenants performed.

Transferred from the common pleas of August, 1824, No. 178.

December 11, 1827, oyer granted; and, by leave of court, the plea of non est factum added to the issues and rule for trial.

April 25, 1828, removed by habeas corpus to the circuit court to September, 1828, No. 2. And now, May 7th, 1831, a jury being called, come, to wit, Archibald Young, Leonard Sommers, and Robert Ferguson, duly elected by ballot, and William Heek, Jonathan Hinkle, John Upperman, William Lambert, Dr. John Leonard, jr., George Waggner, Jacob L. Hoffmyer, Dr. John F. Charles, and Joseph Urban, jun'r, called as talesmen, who being all sworn or affirmed, after which plaintiffs suffer a non-suit.

May 9th, 1831, plaintiffs move to take off the non-suit on reasons filed; motion overruled; plaintiffs appeal to the supreme court; exit record; April 8, 1833, continued for reasons contained in affidavit filed. No discontinuance or judgment to be entered in the mean time.

October 24th, 1834, on motion of R. Frazer, the court grant a rule to show cause why Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Abraham M. Cohen, Elkalah M. Cohen, Samuel M. Cohen, Joseph S. Cohen, and Eleazar L. Cohen, children of Bell Cohen, deceased, and interested in the above case, should not be permitted to come in and prosecute the above case, notwithstanding a power of attorney from Leah Phillips, surviving executrix of the estate of J. Simon, deceased, to B. Champneys, esq., of Lancaster, to suffer a verdict to be taken for the defendants, and judgment thereon to be entered in the above case, filed April 8th, 1833.

Same day, rule made absolute. Same day, on motion of R. Frazer, the court grant a rule on Leah Phillips, surviving executrix of J. Simon, deceased, and on Simon Gratz, one of the defendants in this case, to show cause why they should not deposit, on or before the day of , the books and papers in relation to the estate of the said Joseph Simon, deceased, which were in the possession of Levi Phillips, one of the executors of Joseph Simon, at the time of his death, and which have come into their possession or power of the said Leah Phillips, Simon Gratz, or either of them, in the office of the prothonotary of this court, for the inspection of the children of B. Cohen, deceased, and to be used by them in the trial of this cause. Same day, rule made absolute, with this modification (to which Mr. Franklin, who is Mr. Phillips consents) that the books and papers referred to, be delivered over to Mr. Frazer, counsel for the children of B. Cohen, deceased.

October 27th, 1834, the court having, on motion of R. Frazer, esq., counsel for the heirs of Bell Cohen, deceased, permitted the said heirs to come in and prosecute the above suit, and the plaintiffs having, since the granting of the above rule, and under the direction of the said heirs, suffered a non-suit, on motion of Mr. Franklin, on the part of Mrs. Phillips, the court grant a rule on the said heirs to pay the costs of suit on or before the first day of the next term, or show cause why an attachment should not be issued against them. Same day, on motion of Mr. Montgomery, the court grant a rule on the plaintiffs to show cause

why they should not pay the defendants' costs on or before the first day of the next term, or show cause why an attachment should not be issued against them.

January 6, 1837, argued C. Av.

February 6, 1837, first rule discharged, and second rule made absolute.

LANCASTER COUNTY, *ss:*

The commonwealth of Pennsylvania, to the sheriff of Lancaster, greeting:

You are hereby commanded that you take the bodies of Simon Gratz, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased, so that you have them before our judges of the court of common pleas, to be holden for the same county, at Lancaster, on the third Monday of August next, there to answer Levi Phillips, [L. S.] Leah Phillips, and Beliah Cohen, executors of Joseph Simon, deceased, of a plea of covenant broken.

178.—August term, 1824, (endorsed.)

LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors of Joseph Simon, deceased,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased.

Caps. in covenant. (No bail required.)

Served by copy on Jacob Gratz, N. E. J., as to the rest. So answers FRED'K HAMBRIGHT, *Sheriff.*

(ROGERS.)

The executors of JOSEPH SIMON, deceased,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased.

Of September term, 1828, No. 2. Covenant.

LANCASTER COUNTY, *ss:*

Levi Phillips being sworn deposeth, that he has scruples of conscience against appearing in court to-day and attending to any secular business, and that he believes his presence and aid will be material in the progress of the cause. The original deed of indemnity, without which plaintiffs cannot proceed, is in the possession of the jury, who are now out, and it is material to that cause. Plaintiffs cannot try without the said deed.

Sworn before me, May 7, 1831, in open court.

CHRISTIAN BACHMAN,
Prothonotary.

Affidavit of Levi Phillips, filed May 7, 1831.

In circuit court.

Executors of JOSEPH SIMON, deceased,
vs.
MICHAEL GRATZ'S administrators.

Plaintiffs move to take off the non-suit suffered in this cause, for the following reasons:

1st. Levi Phillips, the only plaintiff attending to the above suit, and attending in behalf of the other plaintiffs, could not appear in court this day for the purpose of attending to the trial of the above cause from conscientious scruples, as stated in his affidavit filed, this day being his sabbath, according to his religious belief, and his presence and aid were material to the trial of the cause.

2d. The original deed of indemnity, upon which the above action of covenant was instituted, was in the possession of the jury, then out, and deliberating in the case of Michael Gratz's administrators vs. Levi Phillips and others, of September term, 1828, No. 1; and said paper, and several other papers sent out by defendants in that cause, were material and essential to sustain plaintiffs' claim in the above cause, and were in the custody of the said jury, and could not be withdrawn, being material and essential to the investigation of the cause which had been committed to said jury.

3d. Upon the cause being called up, and the tales de circumstantibus having been awarded, the sheriff was directed, although plaintiffs' counsel objected, by the court to go out of the court house to make the selection; and the sheriff accordingly went out, and made a selection of persons as jurors from different parts of the city.

J. SIMON COHEN.

Levi Phillips being sworn deposes, that the reasons above stated are true.

LEVY PHILLIPS.

Sworn and subscribed before me, May 7, 1831.

SAMUEL DALE.

Of August term, 1824, No. 178.

LANCASTER COUNTY, *ss:*

Jacob Gratz, against whom and Simon Gratz and Joseph Gratz—the said Jacob, Simon, and Joseph being administrators of all and singular the goods, chattels, and effects, which were of Michael Gratz, late of the county aforesaid, deceased—a certain writ of the Commonwealth of Pennsylvania, commonly called a capias ad respondendum, had issued, to which writ the sheriff of the said county of Lancaster aforesaid was summoned to answer Leah Phillips, Levi Phillips, and Beliah Cohen, executors of the last will and testament of Joseph Simon, late of the same place, deceased, of a plea that they, the said administrators, keep with the said Levi, Leah, and Beliah aforesaid, the covenants made by the said Michael Gratz, in his lifetime, according to the force, form, and effect of a certain deed made by the said Michael Gratz to the said

Joseph Simon, in the lifetime of the said Michael and Joseph. Whereupon the said Levi Phillips, Leah Phillips, and Beliah Cohen, executors as aforesaid, by Henry Rogers, esq., their attorney, complain that, whereas the said Simon Gratz, as agent for his father, Michael Gratz, by virtue of an assignment from David Franks, late of the city of Philadelphia, claimed to be entitled to demand, have, and receive from the said Joseph Simon, of the borough of Lancaster, merchant, all such sums of money, effects, and property in the hands of the said Joseph Simon, which the said David Franks in his lifetime was entitled to, or interested in, in the whole or in part, by virtue of a certain bond and mortgage given by a certain William Trent to the said Joseph Simon and David Franks, dated the fourth day of January, one thousand seven hundred and sixty-nine, conditioned for the payment of four thousand and eighty-two pounds, Pennsylvania currency; and that whereas, also, a certain Thomas Billington, by virtue of an assignment from George Davis, assignee to Tench Coxe and Isaac Hazlehurst, had exhibited to the said Joseph Simon a claim for the said moneys, effects, and property, and had demanded the same of and from the said Joseph Simon, by virtue and under pretence of the said assignment from the said David Franks to Tench Coxe and Isaac Hazlehurst, dated March 20th, one thousand seven hundred and eighty-six, which said assignment was suggested by the said Simon Gratz, and those for whom he acted, to be of no force or operation in the law, and ought not to prevent the said Simon Gratz, being the agent of the said Michael, from receiving the said moneys and property by virtue of the assignment under which he claimed; and whereas, also, the said Joseph Simon would not undertake to judge between the said parties, but was willing to pay over all the moneys, and to assign and set over all effects and property, of the said David Franks in his hands upon being fully indemnified and kept harmless; by virtue thereof the said Michael Gratz did, by his agent, Simon Gratz, on the twenty-sixth day of July, in the year one thousand eight hundred and two, at the county of Lancaster aforesaid, make his certain deed, (which said deed, sealed with the seal of Michael Gratz, they, the said Levi, Leah, and Beliah, executors as aforesaid, here into court bring,) the date whereof is the same day and year last mentioned, and then and there delivered the said deed to the said Joseph Simon, would settle or pay, or undertake to pay, all moneys in his hands, or effects, or other estate or property of the said David Franks to him; and in consideration of the sum of one cent, (which was duly acknowledged to have been received,) the said Michael Gratz, by Simon Gratz, his agent as aforesaid, did then and there covenant and agree, to and with the said Joseph Simon, his executors and administrators, to indemnify and save him and them harmless of and from all and every claim which had been, or should be, exhibited to the said Joseph Simon by the said Thomas Billington or George Davis, or Tench Coxe and Isaac Hazlehurst, all, any, or either of them, by virtue of the said assignment, and from any suit at law or in equity for, or any claim, or demand, or recovery of all, or any part of any moneys, effects, or other property belonging

to the estate of the said David Franks, in the hands of the said Joseph Simon, which should be paid, secured to be paid, set over, or assigned to him, the said Simon Gratz, agent of the said Michael Gratz as aforesaid, and to defend the said Joseph Simon, his executors and administrators, all and every of them, from all and every suit at law or in equity, by reason of or touching the premises, and to conduct the defence thereof, and to pay all fees, costs, or charges, occasioned or to be occasioned hereby, so that the said Joseph Simon, his executors or administrators should not then, or at any other time hereafter, come to or suffer any loss or damage, expenses, or trouble in or by reason of the premises; and the said Levi, Leah, and Beliah, executors of the said Joseph Simon, pray that the said Joseph Simon in his lifetime did, on the same day and year, to wit, on the twenty-sixth day of July, in the year one thousand eight hundred and two, at the county aforesaid, by deed executed by the said Joseph Simon, by his attorney, the said Levi Phillips, and then and there delivered to the said Michael Gratz, undertake to pay the said Simon Gratz, agent of the said Michael Gratz, in consideration of the deed of the said Michael Gratz, hereinbefore recited, and the indemnity therein contained, and in compliance with the terms and provisions of the same, the money of the said David Franks which should come into the hands of the said Joseph Simon, to which the said Michael Gratz might be entitled by virtue of the assignment herein before mentioned of the said David Franks, dated the eighteenth day of May, in the year one thousand seven hundred and ninety. And the said Levi, Leah, and Beliah, executors as aforesaid, further aver, that afterwards, to wit, at divers times at the county aforesaid, the said Joseph Simon, in his lifetime, did pay to the said Michael Gratz, in his lifetime, the moneys, &c., of the said David Franks which came into his hands, and to which the said Michael Gratz claimed to be entitled under the said assignment from the said David Franks so made to him as aforesaid. And the said Levi, Leah, and Beliah, executors as aforesaid, further aver, that he, the said Joseph Simon, in his lifetime, from the time of making the said deed herein before mentioned, by the said Michael Gratz, did, and they, the said Levy, Leah, and Beliah, executors as aforesaid of the said Joseph Simon, since the decease of the said Joseph Simon, have hitherto well and truly performed, fulfilled, and kept all things in the said deed contained on the part of the said Joseph Simon in his lifetime, and on the part of the said Levi, Leah, and Beliah, executors of the said Joseph Simon, since the decease of the said Joseph Simon, to be performed, fulfilled, and kept according to the tenor and effect, true intent and meaning, of the said deed, to wit, at the county aforesaid; yet protesting that the said Michael Gratz in his lifetime has not performed or fulfilled any thing in the said deed mentioned on his part and behalf to be done and performed, nor since his death have the said Simon, Joseph, and Jacob, administrators as aforesaid, performed anything in the said deed mentioned on their part and behalf to be done and performed; but that he and they have wholly neglected and refused so to do; the said Levi, Leah, and Beliah, ex-

ecutors as aforesaid, say that, after the making of the said herein recited deed, by the said Michael Gratz, to wit, on the twenty-ninth day of December, in the year one thousand eight hundred and six, at Philadelphia, to wit, at the county aforesaid, by virtue and under color of the pretended assignment to George Davis, assignee, to Tench Coxe and Isaac Hazlehurst, in the said deed of indemnity mentioned, and which assignment had been previously, to wit, on the twenty-fourth day of July, in the year one thousand eight hundred and six, conveyed and assigned to the said Simon Gratz, to wit, at the county aforesaid, and by the said Simon Gratz to the said Michael Gratz, on the twenty-ninth day of December, in the year one thousand eight hundred and six, at the county aforesaid, the said Michael Gratz did commence an action of account render to the March term, of the year one thousand eight hundred and seven, of the court of common pleas of the city and county of Philadelphia, which said action was removed, by a writ of habeas corpus, to the July term, in the year one thousand eight hundred and seven, of the supreme court of the eastern district of Pennsylvania, and then and there so proceeded in the said cause, under and by virtue of the said pretended assignment, in direct violation of the said deed of indemnity, of the said Michael Gratz, hereinbefore mentioned; that a judgment was obtained in the said action against the said Levi, Leah, and Beliah, executors as aforesaid, for the sum of twelve thousand one hundred and sixty-nine dollars and ninety-four cents, at Philadelphia, to wit, at the county aforesaid, (as appears by the record of the said action here to the court shown,) which said sum of money so recovered, was afterwards then and there fully paid and satisfied by the executors of the said Joseph Simon aforesaid to the said Simon, Jacob, and Joseph, administrators as aforesaid, contrary to the form and effect of the said deed, and of the covenants therein contained, so made by the said Michael Gratz in his lifetime as aforesaid, to wit, at the county aforesaid; and the said Levi, Leah, and Beliah, executors as aforesaid, in fact further say that, afterwards, to wit, on the seventh day of March, in the year one thousand eight hundred and eleven, at Philadelphia, to wit, at the county aforesaid, the said *the said* Michael Gratz in his lifetime, by virtue of and under color of the said pretended assignment to George Davis, assignee of Isaac Hazlehurst and Tench Coxe before recited, and which said assignment had been previously conveyed and assigned to the said Simon Gratz by the said George Davis, to wit, on the twenty-fourth day of July, one thousand eight hundred and six, at the county aforesaid, and by the said Simon Gratz to the said Michael Gratz, on the 29th day of December, in the year one thousand eight hundred and six, to wit, at the county aforesaid, did commence one other action of account render against the said Levi, Leah, and Beliah, executors as aforesaid, to the March term, in the year one thousand eight hundred and eleven, of the said supreme court of the eastern district of Pennsylvania, and so proceeded therein under and by virtue of the said pretended assignment, and in direct violation of the said deed of indemnity so made by the said Michael Gratz in his lifetime,

to the estate of the said David Franks, in the hands of the said Joseph Simon, which should be paid, secured to be paid, set over, or assigned to him, the said Simon Gratz, agent of the said Michael Gratz as aforesaid, and to defend the said Joseph Simon, his executors and administrators, all and every of them, from all and every suit at law or in equity, by reason of or touching the premises, and to conduct the defence thereof, and to pay all fees, costs, or charges, occasioned or to be occasioned hereby, so that the said Joseph Simon, his executors or administrators should not then, or at any other time hereafter, come to or suffer any loss or damage, expenses, or trouble in or by reason of the premises; and the said Levi, Leah, and Beliah, executors of the said Joseph Simon, pray that the said Joseph Simon in his lifetime did, on the same day and year, to wit, on the twenty-sixth day of July, in the year one thousand eight hundred and two, at the county aforesaid, by deed executed by the said Joseph Simon, by his attorney, the said Levi Phillips, and then and there delivered to the said Michael Gratz, undertake to pay the said Simon Gratz, agent of the said Michael Gratz, in consideration of the deed of the said Michael Gratz, hereinbefore recited, and the indemnity therein contained, and in compliance with the terms and provisions of the same, the money of the said David Franks which should come into the hands of the said Joseph Simon, to which the said Michael Gratz might be entitled by virtue of the assignment herein before mentioned of the said David Franks, dated the eighteenth day of May, in the year one thousand seven hundred and ninety. And the said Levi, Leah, and Beliah, executors as aforesaid, further aver, that afterwards, to wit, at divers times at the county aforesaid, the said Joseph Simon, in his lifetime, did pay to the said Michael Gratz, in his lifetime, the moneys, &c., of the said David Franks which came into his hands, and to which the said Michael Gratz claimed to be entitled under the said assignment from the said David Franks so made to him as aforesaid. And the said Levi, Leah, and Beliah, executors as aforesaid, further aver, that he, the said Joseph Simon, in his lifetime, from the time of making the said deed herein before mentioned, by the said Michael Gratz, did, and they, the said Levy, Leah, and Beliah, executors as aforesaid of the said Joseph Simon, since the decease of the said Joseph Simon, have hitherto well and truly performed, fulfilled, and kept all things in the said deed contained on the part of the said Joseph Simon in his lifetime, and on the part of the said Levi, Leah, and Beliah, executors of the said Joseph Simon, since the decease of the said Joseph Simon, to be performed, fulfilled, and kept according to the tenor and effect, true intent and meaning, of the said deed, to wit, at the county aforesaid; yet protesting that the said Michael Gratz in his lifetime has not performed or fulfilled any thing in the said deed mentioned on his part and behalf to be done and performed, nor since his death have the said Simon, Joseph, and Jacob, administrators as aforesaid, performed anything in the said deed mentioned on their part and behalf to be done and performed; but that he and they have wholly neglected and refused so to do; the said Levi, Leah, and Beliah, ex-

ecutors as aforesaid, say that, after the making of the said herein recited deed, by the said Michael Gratz, to wit, on the twenty-ninth day of December, in the year one thousand eight hundred and six, at Philadelphia, to wit, at the county aforesaid, by virtue and under color of the pretended assignment to George Davis, assignee, to Tench Coxe and Isaac Hazlehurst, in the said deed of indemnity mentioned, and which assignment had been previously, to wit, on the twenty-fourth day of July, in the year one thousand eight hundred and six, conveyed and assigned to the said Simon Gratz, to wit, at the county aforesaid, and by the said Simon Gratz to the said Michael Gratz, on the twenty-ninth day of December, in the year one thousand eight hundred and six, at the county aforesaid, the said Michael Gratz did commence an action of account render to the March term, of the year one thousand eight hundred and seven, of the court of common pleas of the city and county of Philadelphia, which said action was removed, by a writ of habeas corpus, to the July term, in the year one thousand eight hundred and seven, of the supreme court of the eastern district of Pennsylvania, and then and there so proceeded in the said cause, under and by virtue of the said pretended assignment, in direct violation of the said deed of indemnity, of the said Michael Gratz, hereinbefore mentioned; that a judgment was obtained in the said action against the said Levi, Leah, and Beliah, executors as aforesaid, for the sum of twelve thousand one hundred and sixty-nine dollars and ninety-four cents, at Philadelphia, to wit, at the county aforesaid, (as appears by the record of the said action here to the court shown,) which said sum of money so recovered, was afterwards then and there fully paid and satisfied by the executors of the said Joseph Simon aforesaid to the said Simon, Jacob, and Joseph, administrators as aforesaid, contrary to the form and effect of the said deed, and of the covenants therein contained, so made by the said Michael Gratz in his lifetime as aforesaid, to wit, at the county aforesaid; and the said Levi, Leah, and Beliah, executors as aforesaid, in fact further say that, afterwards, to wit, on the seventh day of March, in the year one thousand eight hundred and eleven, at Philadelphia, to wit, at the county aforesaid, the said *th* *said* Michael Gratz in his lifetime, by virtue of and under color of the said pretended assignment to George Davis, assignee of Isaac Hazlehurst and Tench Coxe before recited, and which said assignment had been previously conveyed and assigned to the said Simon Gratz by the said George Davis, to wit, on the twenty-fourth day of July, one thousand eight hundred and six, at the county aforesaid, and by the said Simon Gratz to the said Michael Gratz, on the 29th day of December, in the year one thousand eight hundred and six, to wit, at the county aforesaid, did commence one other action of account render against the said Levi, Leah, and Beliah, executors as aforesaid, to the March term, in the year one thousand eight hundred and eleven, of the said supreme court of the eastern district of Pennsylvania, and so proceeded therein under and by virtue of the said pretended assignment, and in direct violation of the said deed of indemnity so made by the said Michael Gratz in his lifetime,

and of the covenants therein contained, that a judgment quod computet was obtained against them, the said Levi, Leah, and Beliah, executors as aforesaid, to account for the sum of two hundred pounds and six pence, (as by reference to the record of the said supreme court for the eastern district of Pennsylvania here to the court shown will appear,) contrary to the form, force, and effect of the said recited deed of indemnity and of the covenants therein contained, so made as aforesaid by the said Michael Gratz as aforesaid, to wit, at the county aforesaid; and the said Levi, Leah, and Beliah, executors as aforesaid, in fact further say, that afterwards, to wit, on the seventh day of March, in the year one thousand eight hundred and eleven, at Philadelphia, to wit, at the county aforesaid, by virtue and under pretence of the said pretended assignment, and in violation of the said deed of indemnity so as aforesaid made, the said Michael Gratz, in his lifetime, did commence an action on the case against the said Levi, Leah, and Beliah, executors as aforesaid, to the March term, of the year one thousand eight hundred and eleven, of the said supreme court of the eastern district of Pennsylvania; which said last mentioned suit was so proceeded in, that afterwards, on the fourteenth day of February, in the year one thousand eight hundred and twenty, at the county aforesaid, judgment of non pros. was entered, as appears by the record of the said supreme court of the eastern district of Pennsylvania here to the court shown, contrary to the form and effect of the said recited deed of indemnity so executed by the said Michael Gratz in his lifetime, and the covenants therein contained. And the said Levi, Leah, and Beliah Cohen, executors as aforesaid, in fact further say, that on the last day and year aforesaid, and at divers other times at the county aforesaid, that they have been to great expense and trouble, and have been obliged to pay costs, fees, and charges, in defending the suit so brought by the said Michael Gratz in his lifetime, amounting in the whole to a large sum of money, to wit, the sum of two thousand dollars, lawful money of the United States, to wit, at the county aforesaid.

And the said Levi, Leah, and Beliah bring into court here the letters testamentary of the said Joseph Simon, whereby it fully appears to the said court here that the said Levi, Leah, and Beliah are executors of the last will and testament of the said Joseph Simon, deceased, and have the execution thereof.

And the said Levi, Leah, and Beliah, executors as aforesaid, in fact say, that the said Michael Gratz in his lifetime hath not, nor have the said Simon, Joseph, and Jacob, administrators as aforesaid, since his death, indemnified and saved harmless the said Joseph Simon in his lifetime, nor the said Levi, Leah, and Beliah, executors as aforesaid, since his death, of and from all or any of the claims against him or them, by virtue of the said assignment to George Davis, assignee to Tench Coxe and Isaac Hazlehurst hereinbefore mentioned; nor against all or any suit or suits instituted at law against him or them by reason of or touching the premises, nor has the said Michael in his lifetime, nor have they, the said Simon, Joseph, and Jacob, administrators as

aforesaid, conducted the defence occasioned thereby, nor paid all or any of the fees, costs, and charges thereof, nor have they, the said Michael, in his lifetime, or the said Simon, Joseph, or Jacob, since his death, kept or performed the covenants in the said deed of indemnity so made by the said Michael Gratz in his lifetime, contained, or any of them, with the said Joseph Simon in his lifetime, or with the said Levi, Leah, and Beliah, executors as aforesaid, since his death; but he and they, the said administrators, have broken the same, and to keep the same have hitherto wholly refused; and the said Simon, Joseph, and Jacob, administrators as aforesaid, still do refuse, to the damage of the said Levi, Leah, and Beliah, executors as aforesaid, forty thousand dollars; wherefore they bring suit, &c.

J. DOE,
R. ROE, *Pledges.*
HENRY ROGERS, *P. Q.*

178.—August term, 1824, (endorsed.)

SIMON'S executors
vs.
GRATZ'S administrators.

Narr. filed June 22d, 1826.

November 3d, 1827, defendants pray oyer of the deed in the declaration mentioned, and plead non impegerunt conventionem, and covenants performed.

December 11th, 1827, oyer granted, and by leave of court the plea of non est factum added; issues and rule for trial.

Executors of JOS. SIMON, deceased,
vs.
MICHAEL GRATZ'S administrators.

Circuit court, Lancaster county, September term, 1828.—No. 2.

Reasons for an appeal in the above case from the decision of the circuit court to the Supreme Court:

1. Levi Phillips, the only plaintiff attending to the above suit, and attending in behalf of the other plaintiffs, could not appear in court on Saturday last for the purpose of attending to the trial of the above cause from conscientious scruples, as stated in his affidavit filed—said day being his Sabbath—according to his religious belief, and his presence and aid were material in the trial of the cause.

2. The original deed of indemnity upon which the above action of covenant was instituted was in the possession of the jury, then out and deliberating in the case of Michael Gratz's administrators vs. Levi Phillips and others, of September term, 1828, No. 1; and said paper and several other papers sent out by the defendants in that cause, were material and essential to sustain plaintiffs' claim in the above cause, and were in the custody of the said jury, and could not be withdrawn, being material and essential to the investigation of the cause which had been committed to said jury.

3. Upon the cause being called up, and a tales de circumstantibus having been awarded, the sheriff was directed, although plaintiffs' counsel objected, by the court to go out of the court-house to make the selection; and the sheriff accordingly went out and made a selection of persons as jurors from the different parts of the city.

J. SIMON COHEN,
May 9, 1831. B. CHAMPNEYS.

We, the counsel for the plaintiffs in the within cause, do certify our belief, that the within reasons are sufficient in law to obtain a decision in favor of our clients, and are not made for the purpose of delay; and we, therefore, hereby appeal from the decision of the circuit court, in refusing to set aside the non pros. in the within case.

J. SIMON COHEN.
B. CHAMPNEYS.

Lancaster, May 9th, 1831.

48.—May term, 1831. (Endorsed.)

LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors, &c., of Joseph Simon, deceased,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Mich'l Gratz, deceased.

Appeal from the circuit court of Lancaster county, filed in supreme court, May 9th, 1831.

PENNSYLVANIA, *Lancaster county, ss:*

The Commonwealth of Pennsylvania, to the judges of the district court for the city and county of Lancaster, greeting:

We command you that the bodies of Simon Gratz, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased, in [L. S.] our prison, under your custody, as it is said, detained, by whatsoever name the said Simon Gratz, Joseph Gratz, and Jacob Gratz may be charged in the same, under safe and sure conduct, together with the day and cause of their being taken and detained, you have before the justices of the supreme court, or one or more of them, at a circuit court to be held at the city of Lancaster, for the county of Lancaster, on the first Monday in September next, then and there to do and receive whatsoever our said justices shall consider in that behalf; and what you shall do by virtue of this writ you shall then return and make known in the office of the clerk of the circuit court at Lancaster, for the said county, together with this writ.

Witness the honorable John B. Gibson, chief justice of the supreme court of Pennsylvania, at Lancaster, in the seventeenth day of March, in the year of our Lord one thousand eight hundred and twenty-eight.

N. W. SAMPLE, JR.,
Clerk, circuit court.

Allowed by MOLTON C. ROGERS.

2.—September term, 1828. (Endorsed.)

LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors of Joseph Simon, deceased,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased.

Habeas corpus.

Norris Montgomery.

The bodies of the within named Simon Gratz, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased, in prison and under our custody detained, together with the day and cause of their being taken and detained, by whatsoever name the said Simon Gratz, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, may be charged in the same, under safe conduct, we have before the justices of the supreme court of Pennsylvania, or one or more of them, at the circuit court, to be held at the day and place within contained.

So answers

A. L. HAYES,
Judge of the district court.

Of September term, 1828.—No. 2.

LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors, &c., of Joseph Simon, deceased,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased.

The plaintiffs' counsel being ordered to trial in the absence of their client, and important papers, necessary to their case, being with the jury now out, which cannot, in justice to that case, be now withdrawn, are under the necessity of asking leave to suffer a non-suit.

J. SIMON COHEN.
B. CHAMPNEYS.

May 7, 1831.

Filed May 7, 1831.

In the circuit court of Lancaster county, Sept. term, 1828.—No. 2.

LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, exec'rs, &c., of Joseph Simon, dec'd,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased.

Power of Atty

I, Leah Phillips, sole surviving executrix of the last will and testament of Joseph Simon, deceased, and sole surviving plaintiff in the above cause, do hereby, at the recommendation of John Moss and L. J. Levy, my personal friends, authorize and direct Benjamin Champneys, esq., of Lancaster, attorney at law, or any other attorney, to ap-

pear for me on the above suit, and to suggest on the record the death of Levi Phillips and Beliah Cohen, two of the above named plaintiffs, and to suffer a verdict to be taken for the defendants, and judgment thereon to be entered in their favor; for which this shall be his sufficient authority.

LEAH PHILLIPS.

Witness—J. Moss, March 18th, 1833.

Endorsements. 2.—*September term*, 1828.

LEVI PHILLIPS et al., executors of Jos. Simon, deceased,
vs.
MICHAEL GRATZ'S administrators.

Authority from Leah Phillips, as surviving executrix of Joseph Simon, deceased, to suffer verdict and judgment for defendants.
Filed April 8th, 1833.

LEAH PHILLIPS, surviving executrix of Joseph Simon,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased.

In the circuit court of Lancaster county, of September term, 1828.
No. 2.

To BENJAMIN CHAMPNEYS, Esq.,
My counsel in the above cause.

SIR: It appears that this action has been continued by the court at the instance of Joseph S. Cohen, one of the sons of my late sister Bilah Cohen, upon his affidavit, containing an assertion or an insinuation that I was unfaithful in my duty as the surviving executrix of my father, in abandoning and giving up the above action. Justly indignant as I must be at the hearing of such a charge, I now hereby authorize and desire you to file this paper, in which I repel the attack made on me by Joseph S. Cohen as untrue, and I hereby desire you to continue the cause, and have it tried in my name at the next court, assuring you and the court, that every thing shall be done by me as the executrix of my father, fully and fairly to try the cause; and that I expect Mr. Joseph S. Cohen and his family to take a full interest in the trial; and that the court, if the cause be lost, will not make me liable for the costs and expenses of the law suit.

Given under my hand and seal, this 15th day of April, A. D. 1833.

LEAH PHILLIPS. [L. S.]

Endorsements. 2.—*September term*, 1828. *Circuit court.*

JOSEPH SIMON'S executors
vs.
MICHAEL GRATZ'S administrators.

Mrs. Phillips' direction to Mr. Champneys. Filed April 23, 1833.

In the circuit court of Lancaster county, Sept. term, 1828.—No. 2.

LEVY PHILLIPS, Leah Phillips, and Bilah Cohen, executors of Joseph Simon, deceased,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased.
} Covenant.

Leah Phillips, of the city of Philadelphia, one of the above named plaintiffs, being duly sworn, deposes and says, that some time in August or September, 1832, Mr. Joseph S. Cohen, who was then her counsel in the above case, called at the house and informed her, that as the trial was about to come on, it was necessary for him to have such papers as he wished in relation to it. Deponent distinctly remembers his saying he wanted what he called the "indemnification" or bond of indemnity. Mr. Cohen examined the trunk in which the papers were, and took such as he wished; so far as deponent is aware, he took all that he wanted; he filled his pockets with papers, and took them away. Mr. Cohen was then deponent's counsel and professional adviser, and as such had free access to her papers. Deponent has never seen the papers since which Mr. Cohen took away, he never having returned them. Deponent has placed this day in the hands of her relative, Mr. Isaac B. Phillips, the box or trunk containing the remainder of the papers, in order that he may examine them, and ascertain whether there are any papers among them relating to this cause. Defendant's eyesight being too much impaired to allow her to make the examination. Deponent has no other papers in her possession or within her control.

LEAH PHILLIPS.

Sworn and subscribed before me, September 4, 1834.

A. PETTIT, *Alderman*.

PHILLIPS et al.
vs.
GRATZ's adm's.
} Covenant.

Isaac B. Phillips, of the city of Philadelphia, being duly sworn, deposes and says, that he has looked over and examined the papers placed in his hands by Mrs. Leah Phillips, and referred to in her affidavit, and so far as his means of information extend, finds no papers relating to the above cause among them.

I. B. PHILLIPS.

Sworn and subscribed before me, September 4, 1834.

A. PETTIT,
Alderman.

Endorsements on affidavits—276. June term 1826.

SIMON's executor
vs.
GRATZ's admin's.
}

Affidavit, filed October 24, 1834.

LEVY PHILLIPS, Leah Phillips, and Beliah Cohen, executors, &c., of Joseph Simon, deceased,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased.

In the circuit court of Lancaster county, of September term, 1828. No. 2.

Joseph S. Cohen, being duly sworn, saith: That on the 23d day of March last, while at Lancaster, at which place he had arrived from Harrisburg, for the purpose of seeing Mr. Champneys in relation to the above cause, he was first informed by him that he had received special powers of attorney from Leah Phillips, surviving executrix of the estate of Joseph Simon, authorizing him to give judgment in favor of the Gratz's in the case pending between the estate of Joseph Simon and them; that on the Monday following the deponent applied to the court of common pleas, of Lancaster county, for a rule to show cause why Sarah M. Cohen, Rebecca M. Cohen, Rachael M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, Samuel M. Cohen, Joseph S. Cohen, and Eleazar L. Cohen, children of Bell Cohen, deceased, and interested in the estate of the said Joseph Simon under his last will and testament, should not be permitted to come in and take defence in a cause then pending in that court; which said rule to show cause was granted by said court; that he returned to Philadelphia on the evening of the 28th ult., having been necessarily absent on business, and on the next morning called with his brother on Mrs. Leah Phillips, and asked her what was the meaning of her having sent those powers of attorney to Mr. Champneys. She replied, what could she do, that Simon Gratz had given and was to give her money for her support. This deponent then demanded the books and papers necessary to conduct this cause, having informed her that he could not permit the interest of her sister's children to be so sacrificed, and that he intended to pursue it. She replied she could not give them, as she had not them; that upon this deponent informing her that he should demand them in writing, and asking in whose possession they were, she replied that the person who was answerable for her papers was then in New York, a Mr. L. J. Levy; that this deponent then consulted his counsel, Benjamin Tilghman, esq., stating to him the necessity of having the books and papers for the trial of the cause; that Mr. Tilghman then addressed a note to Leah Phillips, which is hereto annexed, to which no answer was returned as he verily believes, and was informed by Mr. Tilghman that the papers in relation to the estate of Joseph Simon were in the possession of Levi Phillips, as well as many of the notes of the deponent as counsel in the different cases of the estate, he having confidence in the said Levi Phillips, and after his death they came into the possession of Leah Phillips; that the deponent, though counsel

in the above case, was entirely ignorant of said powers of attorney, or of any arrangement having been made between Leah Phillips, surviving executrix, and the defendants, or any of them, until the said 23d March, nor does he know the particulars of that arrangement; that said powers of attorney were given without the knowledge and consent of himself, or of his brothers and sisters, and to their surprise; that he attended to the business of his late mother, an executrix of said estate, who departed this life on the 29th January last, and would have known if any communication had been made to her by Leah Phillips, or either of the defendants on the subject, and that he firmly believes no communication was made; that his brothers and sisters and himself are interested, under his last will and testament, in the estate of the late Joseph Simon, and in the event of this suit; that not having obtained the necessary papers this deponent is unable to proceed in the trial of this cause.

This deponent, since the above was drawn, has just received the annexed letter and inclosure from Benjamin Tilghman, esq., as he was passing through the bar-room of Cooper's tavern, and deposes that he has not the books and papers, and firmly believes that they are in the possession or power of Leah Phillips.

J. SIMON COHEN.

Sworn and subscribed in open court, April 8, 1833.

CHRISTIAN BACHMAN, *Proth'y.*

PHILADELPHIA, *March* 29, 1833.

MADAM: Having been employed by the representatives of Mrs. Beliah Cohen, deceased, to attend professionally to their interests, and understanding that all the documents, notes, and vouchers, relating to certain causes pending at Lancaster, (one of which may be pressed before the circuit court about to be held there, and in which those interests are deeply involved) are in your possession or power, it becomes my duty most strongly to urge, that all the papers requisite to obtain for them justice may be so placed that access may be had to them for that purpose.

Will you therefore do me the favor, by a reply, to say when I can have an examination of those documents, and my personal convenience shall be made to bend to the strong necessity which exists for an examination of them, at such time and place as you shall name.

With most perfect respect, most truly, yours,

BENJAMIN TILGHMAN,

No. 120, *S. Fourth street.*

Mrs. LEAH PHILLIPS, *executrix of J. Simon, deceased.*

PHILADELPHIA, *April* 6, 1833.

Half-past 10, *p. m.*

MY DEAR SIR: On my return from an arbitration in the case of Bowes vs. Bean, I found the enclosed letter from Wm. B. Reed, esq. It reached me at an hour too late to have any communication with you

before my departure to Lancaster, as stated this afternoon, and I therefore forward the letter addressed to you then.

With perfect respect, very truly, yours,

BENJ. TILGHMAN.

JOSEPH S. COHEN, esq., *of Philadelphia, Counsellor at Law, now at Lancaster.*

PHILADELPHIA, *April* 6, 1833.

DEAR SIR: On my return this evening from Bristol, where I had been attending some road-juries, your note of the 29th ult. to Mrs. Leah Phillips was placed in my hands, with instructions to say to you in reply, that none of the papers you refer to are in her hands; she presumes that they are in the possession of Mr. Joseph S. Cohen, who was the counsel of Mr. Phillips, and in that way had access to them all.

Very truly and respectfully, yours,

WM. B. REED.

BENJ. TILGHMAN, esq.

8th April, 1833. In the circuit court of Lancaster county, before J. Gibson, the affidavit of J. S. Cohen, of 8th April, 1833, having been filed, and the power of attorney of Leah Phillips to B. Champneys, esq., dated 18th March, 1833, having been presented and filed by B. Champneys, esq., a motion was made for a rule to show cause why Sarah M. Cohen and others should not be permitted to come in as plaintiffs, &c.; when the court refused the substitution to be made, on the ground that the orphan's court is the proper court to make the application, and ordered the same to be continued, and the court ordered that no *discountenance* or judgment should be entered in the mean time.

STATE OF PENNSYLVANIA, *Lancaster county, ss:*

I, Z. McLenegan, prothonotary of the district court for the city and county of Lancaster, certify, that the foregoing contains a true copy of the record of the case therein mentioned, so full and entire as the original remaining of record and on file in the office of the said court.

In testimony whereof I have hereunto set the seal of the said court, and subscribed my name, at Lancaster, the eighth day of November, A. D. 1838.

[L. S.]

Z. McLENEGAN, *Prothonotary.*

LANCASTER COUNTY, *ss:*

I, Benjamin Champneys, esquire, president of the court of common pleas of the county of Lancaster, do certify, that the foregoing record and attestation made by Zephaniah McLenegan, prothonotary of the district court for the city and county of Lancaster, whose name is thereto subscribed, and seal of office affixed, are in due form and made by the proper officer.

In testimony whereof I have hereunto set my hand, the third day of May, 1841, (A. L. Hayes, esq , the president of the district court for the city and county of Lancaster being absent.)

B. CHAMPNEYS.

LANCASTER CITY AND COUNTY, *ss:*

I, Zephaniah McLenegan, prothonotary of the court of common pleas for the county of Lancaster, do certify, that the honorable Benjamin Champneys, esquire, by whom the foregoing attestation is made, whose name is thereto subscribed, was at the time of making thereof, and still is, the president judge of the said court, duly commissioned and sworn; to all whose acts as such full faith and credit are and ought to be given, as well in courts of justice as elsewhere.

[L. S.] In testimony whereof I have hereunto set my hand and affixed my seal of the said court, the third day of May, 1841.

Z. McLENEGAN, *Proth'y.*

Pleas before the honorable William Tilghman, chief justice, and his associates, judges of the supreme court of the Commonwealth of Pennsylvania, at Philadelphia. Of the term of July, anno domini, one thousand eight hundred and seven, of the supreme court of the eastern district of Pennsylvania; among other things, it is thus contained:

PHILADELPHIA COUNTY, *ss:*

Levy Phillips, Leah Phillips, and Bell Cohen, executors of the last will and testament of Joseph Simon, were summoned to answer Michael Gratz, in a plea that they render unto the said Michael a reasonable account of the time in which the said Joseph, who is now deceased, was during his lifetime the baliff and receiver of the said Michael, and so forth. Whereupon, by William Rawle, his attorney, the said Michael complains, that whereas the said Joseph, who is now deceased, was in his lifetime, to wit, on the fourth day of April, one thousand seven hundred and ninety, and thence until the commencement of this suit at the county of Lancaster, to wit, at the county of Philadelphia, the bailiff and receiver of the said Michael, and then and there had the care and management of divers lands and tenements of him, the said Michael, to make sale thereof for the common profit of the said Michael and Joseph, to wit, of nineteen hundred and twelve acres of land, in the State of Pennsylvania, formerly of a certain William Trent, and by him conveyed, on the fourth day of April, one thousand seven hundred and seventy-nine; of one tract of land containing three hundred and thirty-four acres, in the name of John Stewart, as warrantee, situated in the county of Bedford, in the said State; of one tract of land, containing three hundred and fourteen acres, in the name of Robert Sample, as warrantee; of one tract of land, containing two hundred and seven acres, in the name of Thomas Camiline, as warrantee; of one tract of land, containing two hundred and seventy-two acres, in the name of Francis Silver, as warrantee; of one tract of land, in the name of Samuel Sample, as warrantee, containing two hundred and ninety-seven acres six perches; and one tract of land, containing three hundred and nineteen acres and five perches, in the name of Joseph Silver, as warrantee; which last mentioned five tracts are all in Centre

county, in the same State; and to render a reasonable account thereof to the said Michael, when he, the said Joseph, should be thereunto required; yet the said Joseph, although often requested, hath not rendered any reasonable account thereof, but the same to render wholly hath refused, and the said Levy, Leah, and Bell, since his death, do still refuse, to the damage of the said Michael ten thousand dollars, suit and pledges, &c. And whereas, also, afterwards, to wit, on the fourth day of April, in the year of our Lord one thousand seven hundred and ninety, at the county aforesaid, in the lifetime of the said Joseph Simon, and also of a certain Bernard Gratz, the said Joseph was the bailiff and receiver of them, the said Bernard Gratz and Michael Gratz, and then and there had the care and management of divers other lands and tenements, which other lands and tenements then and there were of the said Joseph, Bernard, and Michael, in the lifetime of them, the said Joseph and Bernard, to make sale thereof for the common profit of the said Joseph, Bernard, and Michael, to wit, of one tract of land heretofore situated in the county of Northumberland, in the State of Pennsylvania, held in the name of Robert Sample, as warrantee; of one tract of land, heretofore in the same county, in the name of Thomas Cameline, as warrantee; of one tract of land, heretofore in the same county, in the name of Francis Silver, as warrantee; of one tract of land, heretofore in the same county, held in the name of Samuel Sample, as warrantee; and of one tract of land, heretofore in the same county, held in the name of Joseph Silver, as warrantee; all which tracts of land now lie in Centre county, in the same State. Also of nineteen hundred and twelve acres of land in the same State, which formerly were of William Trent, and by him to the said Joseph conveyed, on the fourth day of April, one thousand seven hundred and seventy-nine; and of one tract of land in the same State, held in the name of John Stewart, as warrantee, heretofore in Bedford county aforesaid; and to render a reasonable account of the sale thereof to the said Bernard and Michael Gratz in the lifetime of the said Bernard, and to the said Michael after his death, when he, the said Joseph, thereto should be reasonably required; which Bernard Gratz afterwards, to wit, on the first day of May, one thousand eight hundred and four, at the county aforesaid, departed this life. Yet neither he, the said Joseph, in his lifetime, before nor after the death of the said Bernard, nor the said Levy, Leah, and Bell, since the death of the said Joseph, although often thereto required, have rendered, and account thereof to the said Bernard and Michael, or to the said Michael, but the same to render wholly have refused, and the said Levy, Leah, and Bell, since the death of the said Joseph, still do refuse, to the damage of the said Michael two thousand dollars, and thereof they bring suit, &c. Rawle, p. 2.

By writing filed, it is agreed that the names of Leah Phillips and Bell Cohen, who were not served with process, be struck out of the declaration and proceedings, but that this is not to affect the validity of the action against the estate in case a verdict shall be given for the plain-

tiffs; and the said Levy Phillips comes as one of the executors, by Zaligman Phillips, esq., his attorney, pleads that his testator was never bailiff and receiver, and has fully accounted; plaintiff replies, never accounted and issues; afterwards, to wit, twelfth of February, 1810, defendants by their attorney, Z. Phillips, esqr., also plead, as to both counts, that their testator was never bailiff and receiver, and has fully accounted; plaintiff replies, never accounted and issues; continued December term, eighteen hundred and seven; continued March, July, and December terms, eighteen hundred and eight; continued March, July, and December terms, eighteen hundred and nine. Afterwards, to wit, the thirteenth day of February, in the year of our Lord one thousand eight hundred and ten, a court of nisi prius, at Philadelphia, a jury being called, come to wit, James Briarly, Benjamin Sibly, Conrad Keller, Thomas Thomas, James Earle, Samuel Deal, Thomas Evans, George Snyder, Cadwallader Evans, Jonas Dawson, Hugh Newman, and Matthias Corliss, who being duly impannelled, returned, tried, sworn, and affirmed upon their oaths and affirmations, respectively, do say, that they find for the plaintiff on both issues. Afterwards, on the 19th March, 1810, the court being advised, direct judgment quod computent for the plaintiff. And on the twenty-sixth day of March, one thousand eight hundred and ten, on motion of Mr. Meredith for the plaintiffs, the court appoint Benjamin R. Morgan, esq., George Bickham, and Samuel Mecker, merchants, auditors in the above case; and the said auditors, by writing, filed report on the 28th November, one thousand eight hundred and ten, to wit:

MICHAEL GRATZ
vs.
LEVI PHILLIPS, Leah Phillips, and Bell Cohen, executors of Joseph Simon, deceased.

We, the subscribers, auditors, by the supreme court assigned to take, settle, hear, determine, and report upon the accounts rendered by the defendants under the judgment in the above cause, do certify and report, that we have examined the accounts rendered to us, and the vouchers produced in support thereof, and have heard the parties and their witnesses, and do find and report the sum of twelve thousand one hundred and sixty-nine dollars and ninety-four cents, due from the defendant to the plaintiffs. And we further certify and return, annexed, a statement of the accounts as settled and determined by us, as auditors aforesaid, October 1st, 1810.

SAMUEL MECKER,
BENJ. R. MORGAN,
GO. BICKHAM.

A.

Account sales 1912 acres of land, by Joseph Simon, for account of the concerned.

1779.—March.—⅓ to B. and M. Gratz, for - - -	£637 6 8
⅓ to David Franks, for - - - - - - -	637 6 8
⅓ to Joseph Simon, for - - - - - - -	637 6 8
	£1,912 0 0
Scale of depreciation, 10½ to 1, (specie) - - -	$485 60
1810.—Oct. 1.—Int. on do. 29 years 6 months 23 days	861 37
	$1,346 97

Philadelphia, 1st October, 1810.

B.

Account sales of land by Joseph Simon, for the concerned, the representatives of David Franks and myself, viz:

1804.—May 1.—One tract of land, warranted in the name of John Stewart, 234 acres, for $1,171 62, is - -			$1,171 62
Charges, viz:			
J. Bennett's bill of expenses - - - -	$11 56		
Patenting - - - - - - - -	254 69		
L. Phillips' commission, 5 p. cent - - -	58 58		
			324 83
Proceeds - - - - - - -			$846 79
Interest accrued upon the proceeds, viz: cash in hand at the sale - - - - -	$664 00		
Off charges, as above - - - - -	324 83		
	$339 17		
Interest thereon, 4 years and 5 months, at 6 per cent. -	$89 88		
On bond No. 1, for £50, 3 yrs. 5 m., 3 p. cent. - -	13 67	from 1st May,	1805
On bond No. 2, [for £50,] 2 yrs. 5 m. - - - -	9 67	" "	1806
On bond No. 3, [for £50,] 1 yr. 5 m. - - - -	5 67	" "	1807
On bond No. 4, [for £50,] 5 months - - - -	1 67	" "	1808
	$120 56		$120 56
			$967 35

$967 $\frac{35}{100}$, nett proceeds of principal and interest.
Philadelphia, 1st Oct., 1810.

C.

Account sales of 1,335 acres 56 perches of land, by Joseph Simon, for the concerned, the representatives of David Franks and myself, viz:

1801.—Dec. 5.—To Potter, Gregg & Norris, at $7 per acre		$9,352 00
Allowed in settlement		48 00
		$9,304 00

Charges, viz:

L. Phillips' commissions on accounts, 5 per ct.	$465 20	
1790.—July 2.—James Potter, for surveying	23 33	
1795.—Nov. 3.—George Duffield, a fee	5 00	
	$493 53	
Charles Smith, a fee	6 26	
1801.—May 14.—C. Smith and J. Hamilton's fee	100 00	
Charles Smith and J. Hamilton's fee	50 00	
Other expenses computed	80 00	
1802.—May 1.—Wm. Kerr, surveying	40 00	
		$769 79
Proceeds		$8,534 21

Interest on payments, viz:

1802.—May 6.—First payment	$2,000	
" " "	1,000	
	$3,000	
Six yrs. 4 ms. and 25 ds. interest [thereon] is		$1,152 50
1803.—May 22.—Second payment, $800: 5 yrs. 4 m. 9 d. interest thereon		257 20
1804.—May 22.—Third payment, $800: 4 yrs. 4 m. 9 d. interest thereon		209 20
1805.—May 22.—Fourth payment, $800: 3 yrs. 4 m. 9 d. interest thereon		161 20
1800—May 22.—Fifth payment, $800: 2 yrs. 4 m. 9 d. interest thereon		113 20
Sixth payment, four bonds, $3,200, with interest from 22d May, 1802, 6 yrs. 4 m. 9 d.		1,320 80
		$3,214 10

Brought forward - - - - - - -			$3,214 10
Deduct interest on charges, viz:			$11,748 31
On $23 33, 19 yrs. 2 m. 29 d. - - -	$26 94		
On 11 26, 13 yrs. 10 m. 28 d. - - -	9 39		
On 230, 8 yrs. 4 m. 17 d. - - -	115 65		
On 40, 7 yrs. 5 m. - - - -	17 80		
	$169 78	169 78	
		$11,578 53	

Philadelphia, 1st Oct., 1810.

Product of the whole, viz:

Statement marked A - - - - - - -	$1,346 96
Do " B - - - - - - -	967 35
Do " C - - - - - - -	11,578 53
	$13,892 84
David Franks' assignees: interest per Levy Andrew Levy's statement, agreed to by the parties - - - -	$24,784 00
The heirs of Joseph Simon's do., per account and agreement of the parties - - - - - - - -	3,509 33⅓
	$28,293 33⅓
At 49 1/10th per centage, D. Franks is entitled to - -	$12,169 94
Do., J. Simon's - - - - - - - - -	1,723 08
	$13,893 02

Philadelphia, Oct. 1, 1810.

General statement of the whole.

MICHAEL GRATZ
vs.
LEVI PHILLIPS, Leah Phillips, and Bell Cohen, executors, &c., of Joseph Simon, deceased.

The account of Levi Phillips, Leah Phillips, and Bell Cohen, executors of Joseph Simon, deceased, made at Philadelphia, the first day of October, before George Bickham, Samuel Mecker, and Benjamin R. Morgan, assigned auditors to hear, determine, and report on the account of the said executors, in the supreme court of Pennsylvania, before the justices thereof, from the time that the said Joseph Simon was the receiver of the moneys of the said Michael Gratz, that is to say, the fourth day of April, MDCCXC, the interest allowed in the foregoing is so done, by reason of the particular circumstances of the case, and the admission of it on the part of the accountant himself. October 1, 1810,

which said report was read in open court, on the 10th December, 1810, and, on motion of Mr. Dallas, time allowed by the court to the twentieth December inst., for filing exceptions, and judgment, nisi, on report, suggestion of allowance and disallowance filed, to wit. And now, to wit, this twentieth day of December, in the year of our Lord one thousand eight hundred and ten, the defendants, by their attorney aforesaid, come here into court and say, that the account and report of the auditors in this case assigned ought not to be confirmed by the judgment of the court, for that the said account and report of the said auditors are manifestly erroneous and unjust, in this, that the said auditors in their said account and report, have not given the defendants credit for the value of a certain tract of land sold to John Ritter, and by the testator of the defendants paid to the plaintiffs by mistake; the said tract of land belonging exclusively to the said testator, and not to the plaintiffs in severalty or jointly with the said testator, which the said defendants are ready to verify, to wit, at Philadelphia, in the county aforesaid. And also in this, that the said auditors in their said account and report have given the said plaintiffs credit, as the assignees of David Franks, for a greater proportion of interest in the proceeds of the sales of the several tracts of land in the declaration mentioned, than the said David Franks was entitled to (if the said David Franks, or the plaintiff, as his assignee, ever was entitled to any interest in the said tract of land in the declaration mentioned, which the defendants do not admit.) And this the defendants are ready to verify, to wit, at Philadelphia, in the county of Philadelphia aforesaid. And also in this, that the said auditors, in their said account and report, have not given credit to the defendants for a sum of £60 1s. 6d., in the statement of proceeds of the sale of the tract of 1912 acres of land in their said account specified; which they are ready to verify, to wit, at Philadelphia aforesaid, in the county aforesaid. And also in this, that the said auditors, in their said account and report, have allowed and charged the defendants with interest, contrary to the right and justice of the case, and without due authority; which the defendants are ready to verify, to wit, at Philadelphia aforesaid, in the county aforesaid. And also in this, that the said auditors, in their said account and report, have allowed [and] charged the defendants with sundry sums of money, by reason of claims and demands on behalf of the plaintiff, which claims and demands the said testator, in his lifetime, did not assume to pay, nor have the defendants themselves, or either of them, since the testator's death, assumed to pay (and in relation to which the said defendants tendered plea of the act of limitation, &c.;) which the said defendants are ready to verify, to wit, at Philadelphia aforesaid, in the county aforesaid.

Z. PHILLIPS, *for defendants*.

Twenty-second of March, eighteen hundred and eleven, motion on part of the defendants for a rule on the plaintiffs to plead to exceptions filed; eodem die, rule on part of the plaintiff that the exceptions be dismissed; eodem die, judgment nisi on report of auditors of December term, last past. Second of April, 1811, plaintiff's motion granted, de-

fendant's motion denied, and rule refused; and, eodem die, plaintiff allowed to take execution for the amount of damage laid in narr., without prejudice to the claim for the whole sum reported. 22d July, 1811, motion refused, exceptions being too late, and judgment entered before.

1st March, 1815, I acknowledge to have received satisfaction of the debts, interest, and cost in this suit.

SIMON GRATZ,
Administrator of Michael Gratz, deceased.

STATE OF PENNSYLVANIA, *Philadelphia county, ss:*

I, F. W. Hindman, prothonotary of the supreme court of the eastern district of Pennsylvania, do certify, that the foregoing contains a true copy of the record of the action therein mentioned, as full and entire as the original remains of record in the same court. [L. S.]

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said court, this fifteenth day of January, anno domini one thousand eight hundred and thirty-nine.

F. W. HINDMAN, *Prothonotary.*

ESTERN DISTRICT OF PENNSYLVANIA.

I, the honorable John Bannister Gibson, chief justice of the supreme court of the Commonwealth of Pennsylvania, do certify, that the foregoing record and attestation, made by Francis W. Hindman, esq., late prothonotary of the said supreme court of the eastern district of Pennsylvania, whose name is thereto subscribed, and the seal of said court affixed, are in due form and made by the proper officer.

In testimony whereof I have hereto set my hand, the first day of May, one thousand eight hundred and forty-one.

JOHN B. GIBSON.

Afterwards, to wit, on the twenty-seventh day of May, A. D. 1839, Isaac Phillips and John Moss, two of the defendants named in said bill, by H. M. Phillips, esquire, their solicitor, present to the court here their several answers to the said bill, which, being read and filed, are in the words following, to wit:

In the circuit court of the United States, for the eastern district of Pennsylvania, in equity.

The answer of Isaac Phillips to the bill of complaint of Samuel M. Cohen and Eleazar L. Cohen.

This respondent, now and at all times, saving and reserving to himself all and all manner of benefit of exception to the manifold errors, imperfections, uncertainties, and untruths in the complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as he is advised is or are material or necessary for him to make an answer unto, answering, saith:

That he has no knowledge of any fraudulent or other agreement dated the fifteenth day of February, one thousand eight hundred and

thirty-three, or on any other day, between Simon Gratz and Leah Phillips in the said rule of complaint stated; and he expressly denies that any agreement was at any time entered into between the said Simon Gratz and Leah Phillips at his, the said respondent's instance; or that he, or any one else to his knowledge, advised, instigated, or counselled the said Leah Phillips and Simon Gratz to make or enter into any such agreement.

And this respondent further answering saith, that for any thing this respondent knows to the contrary, the other matters set forth in the complainants' said bill of complaint may be true, but this respondent is an utter stranger to all and every such matter, and cannot form any belief concerning the same.

And this respondent further answering saith, that he never did, nor does he now, claim or pretend to have any right, title, or interest of, in, or to any of the estates or property, real, personal, or mixed, in the said complainants' bill set forth, or any part thereof; and he does disclaim all right, title, or interest to the same, or any part thereof; and this respondent denies all and all manner of unlawful combination, confederacy, wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this respondent; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct; and he humbly prays to be hence dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained.

And this respondent further answers and says, that he avers that the said plaintiffs are not, nor were they at the time of making their said bill of complaint as is therein stated, citizens or residents of the State of New Jersey, nor was either of them, but they then were and are citizens of the State of Pennsylvania, and are therefore not entitled to relief in this court; and of this the said respondent prays to have the same benefit as if he had pleaded the same in bar to the said bill.

HENRY M. PHILLIPS,
Pro. res. IS. PHILLIPS.

CITY OF PHILADELPHIA, *ss:*

On the twenty-seventh day of May, one thousand eight hundred and thirty-nine, before me, one of the aldermen in and for the said city, personally appeared the above named Isaac Phillips, who being duly sworn says, that the foregoing answer is true in substance and in fact.

JOHN BINNS, *Ald'n.*

Answer of John Moss.

In the circuit court of the United States, for the eastern district of Pennsylvania, sitting in equity.

The answer of Jno. Moss to the bill of complaint of Samuel M. Cohen and Eleazar L. Cohen.

This respondent, now and at all times, saving and reserving to himself all and all manner of benefit of exception to the manifold errors, imperfections, uncertainties, and untruths in the complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering, saith:

That he has no knowledge of any fraudulent agreement dated the fifteenth day of February, one thousand eight hundred and thirty-three, or on any other day, between Leah Phillips and Simon Gratz, in the said bill of complaint stated; and that he expressly denies that any such agreement, or any other agreement, at any time was entered into between the said Leah Phillips and Simon Gratz at his, the said respondent's, instance, or that he or any one else to his knowledge ever advised, instigated, or counselled the said Leah Phillips and Simon Gratz to enter any such agreement; that he has no knowledge of the delivery of any papers by the said Leah Phillips to Leyon J. Levy, and their examination by the said Simon Gratz, though he has heard, and believed it to be true, that Simon Gratz did examine certain papers at the house of the said Leyon J. Levy, but what those papers were this respondent has no knowledge; and he *desires* it to be true, that these or any other papers, if examined by the said Simon Gratz, were so examined or were delivered to the said Lyon J. Levy at the instigation or with the knowledge of him, the said respondent.

And the respondent further answering says, that he admits it to be true, that on or about the third day of April, one thousand eight hundred and thirty-three, he was the subscribing witness to a deed executed by the said Leah Phillips, but that he has no knowledge of the contents of the said deed, nor had he further to do with the execution thereof than to sign his name as a subscribing witness thereto; that if at any time he was apprized of the contents thereof, he is unable at this time to recollect the same. And he further answering saith, that he denies that he even was present, either alone or with the said Lyon J. Levy, when Simon Gratz and Leah Phillips, or either of them, had notice of the application and sale in the said bill of complaint mentioned, a copy of which is stated to be contained in exhibit J.

And this respondent further answering saith, that he admits it to be true, that on or about the twenty-eighth day of March, eighteen hundred and thirty-three, he did witness the signature of a paper by the said Leah Phillips, in conjunction with the said Lyon J. Levy, purporting, according to the best of respondent's recollection, information, knowledge, and belief, to be an account; but the contents thereof, and whether the exhibit M appended to the said plaintiff's bill be a true copy or not, he is unable to say.

And this respondent further answering saith, that at the different times referred to in the said plaintiffs' bill, he the said respondent believed,

and still doth believe, that in the controversy pending between the estate of Joseph Simon and Simon Gratz, or others, there was no other party in interest under the will of the said Joseph Simon but the said Leah Phillips, and that her rights alone could be affected by the settlement and adjustment of the same; and that whether advice was given by the said respondent to the said Leah Phillips with reference to such settlement was in consideration of respondent's belief of her being the only party in interest, and of her great age and bodily infirmities, and without any concert with the said Simon Gratz or any one else.

And this respondent further answering saith, that for anything this respondent knows to the contrary, the other matters set forth in the complainants' bill may be true, but this respondent is an utter stranger to all and every such matter, and cannot form any belief concerning the same.

And this respondent further answering saith, that he does not admit it to be true, but expressly denies, that he, the said respondent, during the year eighteen hundred and thirty-two, or at any other time, when Elkalah Cohen was at Mrs. Phillips', called on her in relation to pending negotiations between Simon Gratz and Leah Phillips, or called out Mrs. Phillips, or had a private interview with Mrs. Phillips on the subject. To the best of his knowledge and belief, no such interview was ever had on this subject by him with the said Leah Phillips.

And the respondent further answering saith, that he never did, nor does he now, claim or pretend to have any right, title, or interest of, in, or to, any of the estates or property, real, personal, or mixed, in the said complainants' bill set forth, or any part thereof, and this respondent disclaims all right, title, or interest to the same and every part thereof; and this respondent denies all and all manner of unlawful combinations and confederacy, wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaints contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge and belief of this respondent; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

And the respondent further answering saith, that he avers that the said plaintiffs are not, nor were they at the time of making their said bill of complaint, as stated in their said bill, citizens or residents of the State of New Jersey, but are and were citizens and residents of the State of Pennsylvania, and are, therefore, not entitled to relief in this court; and of this the said respondent prays to have the same benefit as if he had pleaded the same in bar to the said bill.

J. MOSS.

CITY OF PHILADELPHIA, *ss:*

On this fifteenth day of May, eighteen hundred and thirty-nine, be-

fore the subscriber, an alderman in and for the said city, personally appears John Moss, who, being duly sworn according to law, says that the foregoing answer is true in substance and in fact.

J. MOSS.

Sworn and subscribed, May 16th, 1839.

JOHN BINNS, *Alderman.*

Afterwards, to wit, on the 29th day of May, 1839, Henry J. Williams, esq., solicitor for Joseph and Jacob Gratz, present to the court here the answer of the said defendants, in the words following, to wit:

To the honorable the justices of the circuit court of the United States, in and for the third circuit, in the eastern district of Pennsylvania, sitting in equity:

The joint and several answer of Joseph Gratz and Jacob Gratz, two of the defendants to the bill of the complainants, Samuel M. Cohen and Eleazer L. Cohen, citizens of the State of New Jersey.

These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception or otherwise, which can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is necessary for them to make answer unto, severally answering, say:

That they believe Joseph Simon in the said bill named, at the time of his death (which these defendants are informed occurred some time in the year eighteen hundred and four) was seized and possessed of some real and personal estate, the situation, quantity, and value of which they do not know, and are unable to state as to their belief or otherwise.

They believe the said Joseph Simon did make and publish a last will and testament, but they have no copy thereof, and pray that the complainants may be required to make due and legal proof thereof, to which these defendants, for greater certainty, crave leave to refer when the same shall be produced.

And these defendants further answering say, that many of the matters in the said bill of complaint mentioned, occurred before they were born, and others while they were young. Of these they have no knowledge, except as herein stated. They are equally ignorant in relation to the greater part of those of more recent date. They have had no active participation, whatever, in the matters and things in the said bill of complaint mentioned, and their knowledge in relation thereto is very limited.

These defendants believe that some, and perhaps all, of the records and documents to which reference is made by said bill, as dated previous to the year eighteen hundred and thirty, or some similar thereto, were (as these defendants have understood and believe) at one time in existence, but they have not any of them in their possession nor under their control, nor have they any copies thereof; and they do not particularly know, and cannot state, their contents, nor can they say whe-

ther they are or are not truly set out in said bill; but they pray that the complainants may be called on, if at all necessary or relevant, to make due and legal proof thereof, to which, when made and produced, these defendants crave leave to refer.

These defendants believe that Mrs. Bilah Cohen was at an advanced age, and in bad health, in the year 1832, and that she died in the year 1833. That Levy Phillips died some time in the year 1832. That the complainants, Samuel M. Cohen and Eleazar L. Cohen, and also Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, are the children of the said Bilah Cohen; and that they, or some of them, are the persons referred to in the will of the said Joseph Simon, but having no copy thereof, they cannot speak positively, and pray that, if necessary and relevant, the same may be produced, to which they crave leave to refer.

These defendants admit that they are two of the administrators of Michael Gratz, deceased; but the only knowledge they had of the transactions between Simon Gratz and the executors or executrix of Joseph Simon, is contained in three letters received from Simon Gratz by these defendants, and hereunto annexed, marked A, B, and C.

These defendants had neither knowledge of, or participation in, any transactions such as are suggested in the said bill (the accuracy of which suggestions they do not admit nor deny) as having occurred between the said Simon Gratz and the representatives of the said Joseph Simon, or those claiming an interest in his estate, but they declare that the said Simon Gratz was never authorized to take, in his own name, any transfer of the property belonging to the heirs of Michael Gratz, deceased; nor have the said heirs ever given their consent to, or approved of, any such transfer, if any such has been made. Nor have the said heirs of Michael Gratz, so far as these defendants know, ever received any benefit whatever from the deed and agreement in the said bill of complaint mentioned, and said to be dated on the third of April and the fifteenth of February, A. D. 1833, if any such deed and agreement there are, which these defendants do not know, except by inference from the letters hereunto annexed, and therefore cannot admit nor deny.

These defendants were first informed of an arrangement between Simon Gratz and Mrs. Phillips, the surviving executrix of Joseph Simon, deceased, in relation to the transfer of certain lands in Pennsylvania by a note from Simon Gratz, dated June 10th, 1833, a copy of which is hereunto annexed, and is herein before referred to; but neither of them, as administrators of Michael Gratz, or otherwise, have ever paid Mrs. Leah Phillips any sum of money, or given any consideration for any transfer of, or assignment in relation to, lands held by said Joseph Simon, deceased.

And these defendants further say, that they admit they received the letter referred to in the said bill of complaint, dated March 29th, 1833, a copy of which is thereunto annexed, marked O; but as they were, at the time of its receipt, ignorant of the matters to which it particularly referred, they gave it no answer or attention.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are charged in the said bill; without this, that there is any other matter or thing in the said complainants' bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of these defendants.

All which matters and things these defendants are willing to aver and maintain and prove, as this honorable court may direct; and humbly pray to be hence dismissed, with their reasonable costs and charges, in this behalf most wrongfully sustained.

JO. GRATZ,
JAC. GRATZ.

PHILADELPHIA, *ss:*

On this twenty-seventh of May, 1839, before me, the subscriber, John Thompson, an alderman of the city of Philadelphia, personally appeared Joseph Gratz and Jacob Gratz, above named, who, being separately sworn, did severally declare and say, that the facts set forth in the foregoing answer, so far as they are derived from their own knowledge, are true, and so far as they are derived from the information of others, they believe them to be true.

JO. GRATZ,
JAC. GRATZ.

Sworn before me, this 27th day of May, A. D. 1839.
JOHN THOMPSON.

Letter referred to in annexed answer, and marked A.

PHILADELPHIA, 16*th July*, 1837.

Mr. JOSEPH GRATZ.

SIR: I have your note of the 15th inst. In answer to your inquiry, I state that the claims of our father's estate against that of Joseph Simon, deceased, are as follows:

1st. S. J. AND J. GRATZ'S adm'rs
vs.
J. SIMON'S ex'rs.

Philadelphia county, account render, suit; judgment in supreme court, 16th March, 1818; no. nar. filed; judgment for $200; attorneys employed to revive, John Purdon and Thos. Sergeant; no final decision had.

2. S. J. AND J. GRATZ'S adm'rs
vs.
LEVI and Levi Phillips, and Beliah Cohen, executors.
No. 163.
Norris and Montgomery.

Lancaster county, amicable action, 10th Aug. 1822; award referees from plaintiffs, $2,967 84; exceptions filed to report referees, and remains as on docket.

S. S. J. AND J. GRATZ'S adm'rs
vs.
LEVI PHILLIPS, Leah Phillips, and Beliah Cohen. } Norris and Montgomery.

Lancaster county, 1831, amount judgment; $7,916 72, against Levy Phillips and Beliah Cohen.

On this judgment a sale of a piece of ground on the common at Lancaster took place; it brought a small sum, and which the attorneys retained for fees; no other part of this judgment has been collected.

I have no transcript of the dockets, but I believe the above statement is correct.

The only things relative to the estate over which I have control is the balance of the Aughwick tract; one of the unaccounted tracts has been sold; the purchaser has not made any payment; there is some difficulty as to title of a part.

One other tract, a part of a tract of land, containing, perhaps, 90 or 100 acres, is in the possession of a squatter, to whom I shall endeavor to sell when it is convenient to visit that district. In my note of 10th June, 1833, I informed you "that I had purchased from Mrs. Phillips, surviving executrix of Jos. Simon, deceased, the unsold lands in his name, belonging to our father's estate, (which by J. S's will his trustees had authority to sell,) for one thousand dollars, and for which sum I passed a receipt to Mrs. Phillips, for our father's mortg. in some, and one-fourth in other tracts; and which I hold as for the use of the estate."

In February last I presented an account of the sales made, and which you declined the amount of. I now desire to know whether you hold me accountable for the nett proceeds of sales, or chargeable for the one thousand dollars, the amount [of] my receipt to Mrs. Phillips. My administration account remains unsettled, unpaid.

So soon as you find it convenient, be pleased to furnish me with copy of sales of the New York lands.

I think the above comprises answers to your inquiries. I wish to give entire knowledge of the matters inquired of, and I see no reason to retain funds in bank, as there is sufficient now to discharge all the debts of the estate, and which I am prepared to join you in paying over.

Your obedient servant,
SIMON GRATZ.

Letter referred to in annexed answer as marked B.

PHILADELPHIA, *July 24th*, 1837.

Mr. JOSEPH GRATZ.

SIR: Inclosed please find a brief of the transactions between the estate of our father and Joseph Simon. At some future period I intend having drawn up an historical and minute statement, comprising all particulars of proceedings—which are very voluminous—and when done, you shall have. I believe the present comprises all that is material as to the results of these transactions.

Your obedient servant,
SIMON GRATZ.

Since writing the above, I am favored with your note of 21st inst. The statement herein will enable you to determine relative to the lands comprised in deed, Mr. Phillips to me, of 24th April, 1833, and referred to in my communication of the 16th instant; upon receiving your reply on this head my accounts will be rendered you, &c.

Your obedient, SIMON GRATZ.

18th May, 1790. David Franks assigned to Barnard and Michael Gratz, and Michael Gratz, his interest in bond and mortgage of Wm. Trent to Joseph Simon and David Franks, dated 4th January, 1769; proceedings were had on this, and in July, 1790, sundry tracts of land, supposed to be those mortgaged, (the mortgage was for as land in Cumberland county, warrantees' names not mentioned,) were sold by sheriff, Northumberland county, and Joseph Simon became purchaser of 10 tracts; two other tracts purchased by strangers, terms not complied with, were also deeded to Joseph Simon; these lands purchased for account Joseph Simon and Michael Gratz.

See declarations of trust dated 2d Aug., 1790, also 1802 and 1804.

Wm. Trent sold many tracts of land in the year 1779, the transfers of part of which fell to John S. Mifflin, who brought suit for moving against Ritter, tenant in possession. On 30th December, 1802, a compromise was effected, by which Jos. Simon conveyed a moiety of some of tracts purchased by him to John T. Mifflin, who conveyed to Joseph Simon other lands. See agreement dated 30th December, 1802.

26th July, 1802. S. Gratz gave bond indemnity to Joseph Simon to secure him against a claim set up by Thomas Billington for the property, and on same day Joseph Simon executed a new declaration of trust, engaging to pay over all moneys, &c., notwithstanding the claim of Billington.

12th January, 1804. Settlement of accounts between Jos. Simon and Michael Gratz take place relative to their lands. Declaration of trust delivered from Joseph Simon to Michael Gratz. After the death of Joseph Simon, his executors would not account. Suit was brought against them in Lancaster county in the year , and in the year on agreement an amicable action was brought for the recovery of money received by the executors on account [of] sales of lands. January, 1831, judgment was rendered in favor of administrators of Michael Gratz against Levy Phillips and Belah Cohen, (Leah Phillips being femme covert, the court decided judgment could not go against her;) judgment for $7,916 73. Under this judgment proceedings were had in Lancaster county, and Bilah Cohen's interest in lots on the common were sold for a small sum; this was received and retained by the attorneys, Norriss and Montgomery, for fees.

24th April, 1833. Deed, Leah Phillips to Simon Gratz, (consideration 1,000 dollars) by which she conveys an undivided moiety of tracts of land situate in Union county, surveyed in the name of—

Wm. Coxe	containing	- - -	293 acres.	
Chs. Dunagan	"	- - -	230 "	
Daniel Lawrence	"	- - -	165 "	} Then in Mif-
James Wilkes	"	- - -	314 "	} flin county.

James Hunt	containing	195	acres
Philip Palmer	"	200	"
Samuel Laird	"	143	"
W. Foster	"	192	"
An undivided fourth part, name Thos. Hunt		404	"
James Ferguson	containing	364	"

Also on one-fourth part in four parts, D, Bedford county.

James Daily	containing	269.31	
Angus McPherson	"	313	"
Alex. Douglass	"	316	"
Th. Hallowell	"	283	"

Suit was brought by executors of Joseph Simon vs. administrators [of] M. Gratz, under bond indemnity 26th July, 1802. Plaintiff defeated.

20th March, 1786. David Franks assigned all his estates to Tench Coxe and Isaac Hazlehurst. Deed rendered Philadelphia, deed book No. 17, p. 503.

16th May, 1793. Isaac Hazlehurst, Tench Coxe, and David Franks, assigned to George Davis.

20th November, 1795. George Davis assigned to Thomas Billington all the unsold land belonging to David Franks, estate.

24th July, 1806. George Davis assigns to Simon Gratz all the outstanding debts of David Franks.

29th December, 1806. Simon Gratz assigned to Michael Gratz all claims against Joseph Simon, under the above. Under third assignment.

1807. Account render, suit was brought against executors of Joseph Simon in supreme court, Philadelphia. Judgment favor administrators M. Gratz for $10,000, which judgment was paid. See administration account for particulars.

Another account render, suit brought against same in Philadelphia county. Judgment rendered; auditors appointed to fix sum due; this never effected. See my note to you of 16th July, inst.

No. 163. Amicable action, Lancaster county; award referees; appeal entered. See note 16th July, 1837.

Letter referred to in annexed answer as marked C.

PHILADELPHIA, *June* 10, 1833.

Messrs. JOSEPH AND JACOB GRATZ, *Trustees.*

SIRS: I have your note of the 6th instant, covering letter from Benjamin Gratz, proposing the purchase of the residue of tract of land adjoining Lexington part of estate of our deceased father. I assent to the acceptance of his offer for this land, believing it to be as good an offer as would be had from any other purchaser. If you approve of this enclosed, be pleased to forward it to him.

Before I left home on my western jaunt, I purchased from Mrs. Phillips, surviving executrix of Joseph Simon, deceased, the unsold lands held in his name belonging to our father's estate (and which by will became so invested in trustees, as to give power in them to sell) for 1000 dollars, and for which sum I passed to Mrs. Phillips a receipt; this, our father's moiety in some, and one-fourth part in other tracts, I hold as for account of his estate.

(In the original there are three lines erased.)

If you will confer with Mr. Purdon, he will inform you, that to be possessed of the legal title to these lands, this was the only course which would reach it.

I shall be obliged by receiving from you a statement of the particulars regarding late sales of New York lands, if you have yet received such particulars.

I am, SIMON GRATZ.

Afterwards, to wit, on the 3d day of June, A. D. 1839, the answer of Lyon J. Levy is presented to the court here, by H. M. Phillips, esq., his solicitor, and being read and filed, is in the words following, to wit:

In the circuit court of the United States, for the eastern district of Pennsylvania, in equity.

The answer of Lyon Joseph Levy to the bill of complaint of Samuel M. Cohen and Eleazar L. Cohen.

This respondent, now and at all times, saving and reserving to himself all manner of benefit of exception to the manifold errors, imperfections, uncertainties, and untruths in the complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering, saith:

That he has knowledge of an agreement entered into between Simon Gratz and Leah Phillips, which respondent verily believes was entered into on the fifteenth day of February, one thousand eight hundred and thirty-three; and respondent believes the paper marked H, annexed to complainants' said bill of complaint, to be a true copy of said agreement; the original agreement was written by Simon Gratz, and was drawn at or about the time it bears date; respondent cannot recollect who were present at the time of executing the agreement, or whether himself was present or not; the amount was fixed by the agreement of said parties to the said agreement, and of the consideration money therein named, to wit, the sum of fifteen hundred dollars; three hundred dollars was, on the sixth day of April, eighteen hundred and thirty three, handed to respondent by the said Simon Gratz, and promptly paid over to the said Leah Phillips by this respondent, and two hundred and fifty dollars was, on the fourth day of April, eighteen hundred and thirty-four, paid by the said Simon Gratz to the said respondent, who promptly paid the said last named sum to the said Leah Phillips.

And this respondent further answering saith, that he does not know

of the payment of any moneys other than he has already stated, though he verily believes the whole of said fifteen hundred dollars to have been paid to the said Leah Phillips.

And this respondent further answering saith, that he did not know nor believe, nor does he now know or believe, the said agreement to be fraudulent, but he verily believes the same to be a good and lawful agreement; that prior to the execution of said agreement, this respondent inquired from the said parties to the said agreement if the rights of others were affected by said agreement, and it was because the said parties asserted (and this respondent believed as he still does) that the said parties to the said agreement were alone interested in, and affected by it; that this respondent advised the said Leah Phillips, to accept the terms contained in the agreement of February 15th, 1833. And this respondent says, that he does not know whether or not the said agreement was concealed from the knowledge of the children of Bilah Cohen; this respondent never communicated it to them, nor any of them, until the time of his examination before Michael W. Ash, esq., as stated in the said complainants' bill of complaint.

And this respondent further answering saith, that a trunk containing papers, which this respondent believes were the papers of the estate of Joseph Simon, in the possession of Leah Phillips, were sent by the said Leah Phillips to the dwelling of, and to, this respondent, and placed in his hands, for the purpose of permitting an examination of the said papers by the said Simon Gratz, and the selection of any or all of them by the said Simon Gratz; and this respondent avers, that he does not recollect when the aforesaid occurrence took place, but believes it to have been at or about the commencement of the year eighteen hundred and thirty-three, and in the city of Philadelphia.

And this respondent further answering saith, that there was a hair trunk unlocked, and tied with a rope, containing a great many papers placed in his hands; the respondent never examined any one of the papers, nor does he know what they or any of them were; a portion of them were taken by Simon Gratz, and the remainder left by him were sent in the same trunk, by this respondent, to the said Leah Phillips. This respondent has no list of the said papers, or any of them; nor does he know where the said trunk or the said papers are, or ever have been, since he sent them to the said Leah Phillips.

And this respondent further answering saith, that he admits it to be true, that on or about the third day of April, one thousand eight hundred and thirty-three, he was the subscribing witness to a deed, executed by the said Leah Phillips, but that he has no knowledge of the contents of the said deed, nor had he further to do with the execution thereof, than to sign his name as subscribing witness thereto. That if, at the time he was apprized of the contents thereof, he is unable, at this time, to recollect the same; and he further answering saith, that he denies that he ever was present when the said Simon Gratz and Leah Phillips, either of them, had notice of the application and rule in the said bill of complaint mentioned, a copy of which is stated to be contained in exhibit J, annexed to complainants' bill of complaint.

And this respondent further answering saith, that he admits it to be true, that on or about the eighth day of March, eighteen hundred and thirty-three, he did witness the signature of a paper by the said Leah Phillips, in conjunction with the said John Moss, purporting, to the best of respondent's recollection, information, knowledge, and belief, to be an account; but the contents thereof, and whether the exhibit N, appended to the said plaintiffs' bill be a true copy or not, he is unable to say.

And this respondent further answering saith, that at the different times referred to in the said plaintiffs' bill, he, the said respondent, believed, and still doth believe, that in the controversy pending between the estate of Joseph Simon and Simon Gratz, or others, there was no other party in interest under the will of the said Joseph Simon, but the said Leah Phillips, and that her rights alone would be affected by the settlement and adjustment of the same; and that whatever advice was given by the said respondent to the said Leah Phillips, with reference to such settlement, was in consideration of her being, in the respondent's belief, the only party in interest, and of her great age, bodily infirmities, and extreme poverty, and without any concert, collision, combination, or confederacy with the said Simon Gratz, or any one else.

And this respondent further answering saith, that for anything this respondent knows to the contrary, the other matters set forth in the complainants' bill may be true; but this respondent is an utter stranger to all and every such matter, and cannot form any belief concerning the same.

And this respondent further answering saith, that he never did, nor does he now claim, or pretend to have any right, title, or interest of, in, or to, any of the estates or property, real, personal, or mixed, in the said complainants' bill set forth, or any part thereof; and he does disclaim all right, title, and interest to the same, and to every part thereof; and this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing, in the said complainants' said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge and belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

And the respondent further answering saith, that he avers that the said plaintiffs are not, and were not at the time of making their said bill of complaint, citizens of the State of New Jersey, as stated in their said bill of complaint, but they were, and still are, citizens of the State of Pennsylvania, and are, therefore, not entitled to relief in this court; and of this the respondent prays to have the same benefit as if he had pleaded the same in bar to the said bill.

LYON JOSEPH LEVY.

CITY OF PHILADELPHIA, *ss:*

On this third day of June, eighteen hundred and thirty-nine, before the subscriber, an alderman in and for said city, personally appears the above named Lyon Joseph Levy, who, being duly sworn according to law, says, that the foregoing answer is true, in substance and in fact.

LYON JOSEPH LEVY.

Sworn and subscribed, June 3d, 1839.

JOHN BINNS, *Alderman.*

And thereupon, to wit, on the said third day of June, A. D. 1839, rule on defendants, who have not answered the bill, to answer on or before the first Monday of July next.

Afterwards, to wit, on the twenty-fourth day of June, A. D. 1839, rule to answer extended as to S. Gratz, till rule day in August next. And Isaac B. Phillips, afterwards, to wit, on the 26th day of June, 1839, by H. M. Phillips, esq., his solicitor, presents to the said court his answer, viz:

In the circuit court of the United States, for the eastern district of Pennsylvania, in equity.

The answer of Isaac B. Phillips to the bill of complaint of Samuel M. Cohen and Eleazar L. Cohen.

This respondent, now and at all times, saving and reserving to himself all and all manner of benefit of exception to the manifold errors, imperfections, uncertainties, and untruths in the complainants' said bill of complaint contained, for answer thereto, or unto so much and unto such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering, saith:

That he has no knowledge of any fraudulent or other agreement made between Simon Gratz and Leah Phillips at any time; and he expressly denies that any agreement, at any time, was entered into by the said Leah Phillips and the said Simon Gratz at his, the said respondent's, instance, or that he, or any one else to his knowledge, ever advised, instigated, or counselled the said Leah Phillips and Simon Gratz to enter into any agreement.

And this respondent further answering says, that Michael Gratz died in September, of the year eighteen hundred and eleven; that Levy Phillips died on the fifteenth day of January, in the year eighteen hundred and thirty-two; that Bilah Cohen died on or about the twenty-ninth day of January, eighteen hundred and thirty-three; and that the complainants, Samuel M. Cohen and Eleazar L. Cohen, and also Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen are the children of the said Bilah Cohen.

And this respondent further answering saith, that, for any thing this respondent knows to the contrary the other matters set forth in the complainants' bill may be true; but this respondent is an utter stranger

to all and every such matter, and cannot form any belief concerning the same.

And this respondent further answering saith, that he never did nor does he claim or pretend to have any right, title, or interest of, in, or to any of the estates or property, real, personal, or mixed, in the said complainants' bill set forth, or any part thereof, and does disclaim all right, title, or interest to the same and every part thereof. And this respondent further answering saith, he denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, to the knowledge and belief of this respondent; all which matters and things this respondent is ready and willing to answer, maintain, and prove, as this honorable court shall direct; and hereby prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

HENRY M. PHILLIPS,
For respondent.

CITY OF PHILADELPHIA, *ss:*

On this twenty-fifth day of June, in the year eighteen hundred and thirty-nine, personally appears the above named Isaac B. Phillips, who, being duly sworn, says, that the foregoing answer is true in substance and in fact. I. B. PHILLIPS.

Sworn and subscribed before
WILLIAM MILNOR, *Alderman.*

And now, to wit, this first day of July, A. D. 1839, on motion of Mr. Tilghman, and affidavit of service of rule filed, ordered by the court, that the bill be taken pro confesso as to Leah Phillips, unless her answer be filed this day, with leave to move to have her answer received on Monday next, if filed or presented to the court on or before that day. And now, to wit, on the same day, the answer of Leah Phillips is presented to the court here, by H. M. Phillips, esq., her solicitor, as follows, to wit:

In the circuit court of the United States, for the eastern district of Pennsylvania, April session, 1839, No. 1, in equity.

The answer of Leah Phillips, one of the defendants to the bill of complaint of Samuel M. Cohen and Eleazar L. Cohen, complainants.

The defendant, now and at all times hereafter, saving and reserving to herself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereto, or to so much thereof as she is advised is material for her to make answer to, the defendants answering, saith:

That she believes it to be true that Joseph Simon, late of the borough of Lancaster, was, in his lifetime, and at the time of his decease, lawfully seized and possessed of a large real and personal estate, situate and being in the said State of Pennsylvania, the value thereof at the time of his decease this defendant is unable to state.

And this defendant further answering saith, that she has been informed and believes it to be true, that the said Joseph Simon in his lifetime, to wit, on the 26th day of October, 1799, made his last will and testament, and subsequently codicils thereto, copies of which are appended to the plaintiffs' bill, and marked A, to which the said defendant begs leave to refer as part of her answer.

This deponent further answering says, that the said Joseph Simon departed this life at Lancaster, on the 24th day of January, 1804, and that his said will and codicils were duly proved, and letters testamentary granted to the executors and executrices therein named, who took upon themselves the execution of said last will; but that the execution of the said will devolved wholly on the said Levy Phillips, who conducted it exclusively during his life.

And this said defendant further answering says, that of all the matters charged and inquired of in the plaintiffs' said bill, in relation to the transactions of Joseph Simons and others, she has no knowledge or information, and is really ignorant; that upon the death of the said Levy Phillips and Beliah Cohen, she, the said defendant, became the surviving executrix of the said Joseph Simon, with all authority conferred on her by law, and that on the death of the said Levy Phillips she retained in her possession all the papers connected with the said estate, which were deposited in a trunk then and still in defendant's possession; that to her knowledge no one before the year 1833 had access to the said papers, except Joseph S. Cohen, one of the defendants in this suit, and the brother of the plaintiffs; that the said Joseph S. Cohen had been in the habit of acting as counsel for the said Levy Phillips during his life, and then and since for his brothers and sisters, two of whom are plaintiffs in this action, and had at all times free access to the said papers. And this defendant further answering says, that at one time, prior to the year 1833, and after the death of Levy Phillips, the said Joseph L. Cohen came to the house of this defendant, for the purpose of examining the said papers belonging to the estate of the said Joseph Simons; that he did examine them all, and took away with him a number of papers which he selected, and which he never has returned. This defendant further says, that she is unable to fix the precise time of this visit of Joseph S. Cohen, further than this, that it was after the death of Levy Phillips, and long before any negotiation between this defendant and Simon Gratz.

And this defendant further answering saith, that in the year 1832, she being of a very advanced age, being then in her sixty-ninth year, of infirm health, almost totally blind, and in very necessitous circumstances, was determined by the advice of her friends, Isaac B. Phillips, John Moss, and Lyon J. Levy, to make a settlement of long pending

controversies between the estate of Joseph Simons, of which she was the surviving representative, and of Michael Gratz, which she believed to be represented by the said Simon Gratz, and also to make sale of such lands vested in her under the will of said Joseph Simons, as the said Simon Gratz might be willing to purchase. The defendant says, that her object in proposing the arrangement was to terminate controversies which she was unwilling and unable to carry on, and to obtain such a sum of money as would relieve her from embarrassment, which gave her great uneasiness; the said defendant then and still believes that in making this arrangement she prejudiced the rights of no one, but did what the law gave her perfect authority to do; and this defendant answering says, that in the month of October, 1832, she addressed several notes to said Simon Gratz, desiring to confer with him on the proposed arrangement and purchase, and that she had several interviews with him at her own house, and at his counting-house, and that she entered into an agreement with him, the said Simon Gratz, in order to terminate the pending suits above referred to, and made a conveyance of certain lands to the said Simon Gratz, receiving therefor the sum of fifteen hundred dollars, which was duly paid on and after the execution of the said conveyance and agreement.

And this defendant further answering says, that with a view to carry such conveyance into full effect, she deposited with Lyon J. Levy a trunk of papers, being the same which Joseph S. Cohen had as aforesaid fully examined, and from which he had selected certain papers in order that the said Simon Gratz should examine the same, and take therefrom such papers as muniments of title as might be necessary to carry into full effect the said conveyance; that after the said trunk had remained some time in the said Levy's possession, it was returned and is now in the defendant's possession.

And this defendant further answering says, that she admits it to be true that Levy Phillips, one of the executors of Joseph Simon, did die on or about the 15th January, 1832, and that Beliah Cohen, an executrix of Joseph Simons, did depart this life on or about the twenty-ninth day of January, 1833.

And the defendant further answering saith, that there were no other negotiations between this defendant and Simon Gratz, during the life of Beliah Cohen or afterwards, than those already stated; that they had for their object the final termination of controversies between the estates of Michael Gratz and that of Joseph Simon, which this defendant was neither able nor willing to continue, and the conveyance of certain lands for an adequate consideration to be paid by the said Simon Gratz to this defendant as above stated.

That the negotiations between this defendant and the said Simon Gratz were verbal, and took place partially at his counting-house and partially at her house; that this defendant is unable at this time more precisely to state what conversation passed between her and the said Simon Gratz, nor has she copies of any papers which were executed; that there were executed an agreement for the termination of certain

pending suits, and two deeds of certain lands in Columbia and Lancaster counties; that no persons took part in such negotiations but herself and Simon Gratz, and that these negotiations were not concealed from Belah Cohen or her children.

And the defendant further answering saith, that Simon Gratz did call on this defendant at her house in Arch street on two occasions, one at the time of the execution of the deeds, and once previously, though the precise period of the first call this defendant is unable to state; that this first call was not made in consequence of any previous notice; that Elkalah M. Cohen was at this defendant's house when Simon Gratz called; that Simon Gratz did not then disclose the object of his call; that he did not state he was not aware that this defendant resided there; that he had not before called there, and this defendant is not aware from whom he received information where she resided.

And this defendant further answering says, that there were other interviews between the defendant and Simon Gratz, but whether there were more than two, and whether they occurred before or after the death of Mrs. Belah Cohen, this defendant is unable to state; this defendant had several interviews with Simon Gratz at his counting house, and the object of this defendant in going to Mr. Gratz's counting house was to relieve him of as much trouble as possible, in a matter in which this defendant then believed, and still believes, he was doing her a kindness.

And this defendant further answering saith, that she has no recollection of ever stating to Elkalah M. Cohen, when Simon Gratz called on her, or that she, the defendant, had no idea of seeing Simon Gratz, and was as much surprised at his calling on her as Miss Cohen could possibly be; nor has she any recollection of any private interview between herself and John Moss, at any time when Elkalah M. Cohen was at this defendant's; nor is she able to say how soon after the death of Belah Cohen this defendant had an interview with Simon Gratz; nor more particularly to state what passed at that or any other interview than she has already stated.

And this defendant further answering says, that five hundred and fifty dollars, part of the consideration of the said agreement and conveyance, was paid to this defendant by L. J. Levy and the rest by Simon Gratz; and that the total amount of said consideration was agreed upon by and between this defendant and Simon Gratz; and that there was no other consideration of the same than the said sums of fifteen hundred dollars. And this defendant further answering says, that she never to her knowledge saw John Purdon, esq., or had any conference with him on this or any other business, nor has this defendant any knowledge of application being made to Frederick Beates to draw any deed from this defendant to Simon Gratz, and his refusing to do so. And this defendant further answering says, that she was not, nor is she now, cognizant of any interest of Belah Cohen's children in the estate of Joseph Simons, as she has been informed, and verily believes, that Belah Cohen at the time of her death was largely indebted to the estate of Joseph Simon to a greater amount than that of any inter-

est her children had therein. And this defendant further answering says, that such of the papers belonging to the estate of Joseph Simon as remained in her possession after Joseph L. Cohen had as aforesaid examined them and taken such as he pleased, were in the early part of the year 1833, according to the best of this defendant's recollection, placed by her in the hands of Lyon J. Levy; this defendant is unable further to state what those papers were; they were placed there in order that Simon Gratz should take from them such papers and parchments of title as might be connected with the suits to be terminated and the property conveyed by this defendant to Simon Gratz as aforesaid, and defendant is informed, and believes, that Simon Gratz made a list of the papers taken by him which is in his possession. The rest of the papers were returned to this defendant, and are now in her possession.

And this defendant denies all and all manner of unlawful combibination and confederacy wherewith she is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainants' bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, and maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed, with her reasonable costs and charges in this behalf most unjustly sustained.

LEAH PHILLIPS.

CITY OF PHILADELPHIA, *ss:*

Before me, the subscriber, one of the aldermen of the said city, on the first day of July, A. D. 1839, personally appeared the above named Leah Phillips, who being duly sworn did say, that the foregoing answer is true in substance and in fact.

Witness my hand and seal.

S. BADGER, *Alderman.*

Afterwards, to wit, on the second day of August, A. D. 1839, the complainants aforesaid, by their solicitors, present to the said court their bill of revivor as to Simon Gratz, which being read and filed is in the words following, to wit:

To the honorable the judges of the circuit court of the United States, in and for the third circuit, in the eastern district of Pennsylvania, sitting in equity.

Humbly complaining, show unto your honors your orators, Samuel M. Cohen and Eleazar L. Cohen, citizens of the State of New Jersey, that your orators, on or about the sixteenth day of January, in the year one thousand eight hundred and thirty-nine, exhibited their original bill of complaint in this honorable court against Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachael M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, all citizens of the State of Pennsylvania, thereby

stating such several matters and things as are therein for that purpose more particularly mentioned and set forth, and praying that it might be declared by your honorable court that a certain agreement made between the said Simon Gratz and the said Leah Phillips, dated the sixteenth day of February, one thousand eight hundred and thirty-three, a copy of which was annexed unto the said bill marked H, and certain warrants of attorney therein mentioned, *day* and under a certain penalty therein to be mentioned, personally to be and appear before this honorable court, then and there to answer the premises, and to show cause, if cause there be, why said suit and proceedings, so abated as to the said Simon Gratz as aforesaid, should not be revived against them, and be in the same plight and condition as the same were at the time of the abatement thereof; and to stand to and abide such order and decree in the premises as this honorable court shall deem agreeable to equity and good conscience; and your orators will ever pray, &c.

THOMAS A. BUDD,
Solicitor for complainant.

And thereupon it is ordered that a subpœna issue to Louisa Gratz, Edward Gratz, David Gratz, and Isaac Prince, the executors of the said Simon Gratz. Ret. rule day in August next.

(Afterwards, to wit, on the fifth day of August, A. D. 1839, subpœna returned "served.")

Afterwards, to wit, on the 11th day of September, A. D. 1839, on motion of Mr. Tilghman, rule on S. Gratz's executors to answer on or before rule day in October next.

Whereupon afterwards, to wit, on the second day of October, A. D. 1839, the said respondents make and file the following plea, to wit:

The plea of Louisa Gratz, Edward Gratz, David Gratz, and Isaac Prince, executors of Simon Gratz, deceased, citizens of the State of Pennsylvania, to the bill of Samuel M. Cohen and Eleazar L. Cohen.

The said defendants, by protestation, neither confessing or acknowledging all or any of the matters and things in the complainants' said bill mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, do plead thereunto, and for plea say, that the said complainants were, at the time of filing the said bill, and now are, citizens of the State of Pennsylvania, and were and are not as in said bill they are described, citizens of the State of New Jersey, and as such were not and are not entitled to implead the said defendants, being citizens of the said State of Pennsylvania, in this court; all which matters and things these defendants do aver to be true, and plead the same to the whole of the said bill, and humbly demand the judgment of this honorable court whether they ought to be compelled to make answers to the said bill of complaint, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

MEREDITH & REED,
For complainants.

Afterwards, to wit, on the seventh day of October, A. D. 1839, on motion of Mr. Tilghman, rule on S. Gratz's executors to show cause why the plea to bill of revivor should not be struck off. Returnable 11th instant.

And thereupon, to wit, on the said eleventh day of October, rule to strike off plea absolute.

Afterwards, to wit, on the second day of November, A. D. 1839, rule on executors of S. Gratz to answer the original bill in three weeks.

And the said executors of Simon Gratz, by their solicitors, present to the said court their answer in the words following, to wit:

The joint and several answer of Louisa Gratz, executrix, and Edward Gratz, David Gratz, and Isaac Prince, executors, of the said last will and testament of Simon Gratz, deceased, to the original bill of complaint of Samuel M. Cohen and Eleazar L. Cohen, and also their answer to the bill of revivor of the said complainants:

The said defendants, at all times reserving to themselves all right of exception to the said bill of complaint, for answer thereto say, that true it is that the said Simon Gratz lately, to wit, on the fourteenth day of July last past, departed this life, and that the said Simon duly made and published his last will and testament, and thereby appointed the said Louisa Gratz executrix, and the said Edward and David Gratz, and Isaac Prince, executors thereof; and that the said will was duly proved, and letters testamentary granted to the said defendants, whereby the said defendants became the legal representatives of the said Simon Gratz.

And they further answering say, that they are entirely ignorant, nor can they set forth their belief or otherwise, touching the matters inquired of in the said original bill of complaint connected with the estate of Joseph Simon, or Beliah Cohen, or Bernard and Michael Gratz, or with the acts or negotiations of the said Simon Gratz, either on his own account, or as the representative of Bernard or Michael Gratz, with Leah Phillips, Levi Phillips, L. J. Levy, John Moss, Isaac B. Phillips, or any of the other persons in the said bill named, these defendants being strangers to all such matters, and having no knowledge whatever of them, or any of them. That they have no knowledge whatever of the conduct or situations of the different actions at law in the said bill of complaint set forth, being utter strangers thereto.

They further answering say, that among the papers of the said Simon Gratz were found the following, copies of which, as prayed for in the said complainants' bill, are hereto appended, and marked from No 1 to 21 inclusive, but these defendants are ignorant in whose handwriting many of the papers are, and how far they are genuine:

No. 1. A paper, endorsed "Agreement, Joseph Simon, L. A. Levy, David Franks, William Trent, May, 16, 1760.

No. 2. A paper, purporting to be an order of David Franks, dated 18th May, 1790, and endorsed, accepted 22 May, 1790.

No. 3. A paper, purporting to be a conveyance from David Franks to Bernard and Michael Gratz.

No. 4. A paper, endorsed "Declaration of trust, Joseph Simon to Michael Gratz, January 12, 1804.

No. 5. A letter, endorsed in the handwriting of Simon Gratz, Jos. Simon, Lancaster, May 20, 1802, informing of Billington's application.

No. 6. A paper, endorsed in the handwriting of Simon Gratz, "Simon Gratz to Joseph Simon, 23d May, 1802. Notice of Billington's application.

No. 7. A paper, endorsed in the handwriting of Simon Gratz, "Simon Gratz, indemnification for moneys, &c., to Joseph Simon, on account of David Franks, July, 1802. Copy."

No. 8. A paper, endorsed in the handwriting of Simon Gratz, July 24, 1806, No. 10, George Davis to Simon Gratz.

No. 9. A paper, endorsed "Assignment, Simon Gratz to Michael Gratz, Dec. 29, 1806, erroneously dated within 1789. W. Rawle.

No. 10. A paper, endorsed "Agreement, Joseph Simons and William Trent, respecting lands, 26 April, 1779.

No. 11. A paper, endorsed in the handwriting of Simon Gratz, "Land, ten tracts in Northumberland county, Joseph Simons and Michael Gratz, 2 August, 1790. Declaration of trust.

No. 12. A paper, partially in the handwriting of Simon Gratz, and endorsed by him—Joseph Simon to Simon Gratz, attorney, &c., of Michael Gratz, engaging to pay one-half of all moneys which may come to his hands on account of Trent's bond and mortgage, July 26, 1802.

No. 13. Two papers, endorsed in the handwriting of Simon Gratz, "Leah Phillips, 31 October, 1832," and "Mrs. L. Phillips, 7 December, 1832, purporting to be notes addressed to Simon Gratz.

No. 14. Paper without endorsement, partially in the writing of Simon Gratz, headed "propositions, 13 February, 1833.

No. 15. A paper, purporting to be a deed from Leah Phillips to S. Gratz, dated 6 May, 1833.

No. 16. A paper, endorsed in the handwriting of Simon Gratz, "Deed, 3 April, 1833; Leah Phillips, executrix, to Simon Gratz.

No. 17. A paper, endorsed in the handwriting of Simon Gratz, Deed, 24 April, 1833; Leah Phillips, executrix, to Simon Gratz, for lands in Union, Juniata, and Bedford counties, Pennsylvania—consid. $1,000.

No. 18. A paper, endorsed in the handwriting of Simon Gratz, "Statement of ac. with Leah Phillips, and her receipt for $132 65, being balance due her 20 July, 1836. Copy.

No. 19. A paper, endorsed by Simon Gratz—list of papers delivered by Mrs. Leah Phillips.

No. 20. A paper, endorsed by Simon Gratz—George Davis, my receipt to him and Joseph Simons, indemnification.

No. 21. A paper, endorsed by Simon Gratz, "Jos. Simon to Michael Gratz, 24 July, 1794.

The original of which copies are in the possession of the defendants, and subject to the order and directions of this court.

And these defendants further answering say, there are among the papers of the said Simon Gratz many letters from Ner Middleswarth, relating to certain lands under his care and management as agent of the said Simon Gratz. That these letters are very numerous, and these defendants are advised and believe that it is not material to the complainants' bill, nor is it in their power, to annex copies of the same to this their answer; but that the originals are in their control, subject to whatever order the court may make in relation thereto, and ready to be produced if required.

And the defendants further answering say, that they have appended hereto a copy, marked No. 22, of an account taken from the books of the said Simon Gratz, of sales, &c., made by the said Ner Middleswarth, for and on account of lands, and that they have no other knowledge respecting the same.

And these defendants deny all manner of unlawful combination wherewith they are by the said bill charged with, or that there is any other matter or thing in the said bill contained material for them to make answer to, and not herein well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge and belief of these defendants. All which matters and things these defendants are willing to aver, maintain, and prove, as the honorable court shall direct; and humbly pray to be thence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

LOUISA GRATZ,
EDW. GRATZ,
DAVID GRATZ,
ISAAC PRINCE.

The twenty-second day of November, 1839, before me, the subscriber, one of the aldermen of the city of Philadelphia, came the above named Louisa Gratz, Edward Gratz, and Isaac Prince, who being duly sworn saith, that the above answer made by them is just and true, to the best of their belief and knowledge.

Witness my hand.

S. BADGER, *Aldm.*

Sworn to by David Gratz, and subscribed by him the 26th day of November, 1839, before

FA. HOPKINSON,
Clerk circuit court.

No. 13.

Mrs. L. Phillips, complainant, to Mr. S. Gratz would wish to know at what hour this day it would be convenient for her to see him at his counting house.

Friday morning, Dec. 7, 1832.

SIMON GRATZ, esq.

SIR: Will you allow me the favor to see you in the morning, say 12 o'clock. October 31st, 1832.

LEAH PHILLIPS.

No. 14.

February 13, 1833. Propositions. Acts to be performed by *Mr.* Leah Phillips, surviving executrix of Joseph Simon, deceased.

1st. To execute deed for Michael Gratz, interest and unsold land.

2d. To direct her attorney in suit, in common pleas court, of Lancaster county, of January term, 1822, No. 163.

Amicable action, August 10, 1822. Award of reference in favor of plaintiff for $2,967 84.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased,
vs.
LEVI PHILLIPS, Leah Phillips, and Belah Cohen, executors for Joseph Simon, deceased.

To bring up the case and argument, and permit the exceptions to be overruled and the award affirmed.

3d. To settle the sum due on sales house and lots in Carlisle, on judgment in Supreme Court, which shall be submitted to the auditors to report thereon.

4th. The suit—

In the circuit court of Lancaster county, Sept. term, 1828.—No. 2.

LEVI PHILLIPS, Leah Phillips, and Bilah Cohen, executor of Joseph Simon, deceased,
vs.
SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased.

Mrs. Phillips and her attorney to direct discontinuance of this action.

5th. To transfer all her interest in the estate of Joseph Simon to Simon Gratz for the sum of $ blank, this to be fixed, (1500—500 in hand, 500 in one year, and 500 in two years)—if the product of this shall produce a sum exceeding the amount of the above judgment, and the sum to be paid as a consideration, then the excess is to be paid over to Mrs. L. Phillips.

The blank to be filled up with fifteen hundred dollars—five hundred dollars in hand, five hundred in one year, and five hundred dollars in two years.

S. GRATZ.

February 13, 1833.

Says agreement instead of argument. Order on Mr. N. Middleswarth.

DR. ANDERSON.

This indenture, made the sixth day of May, in the year of our Lord one thousand eight hundred and thirty-three, between Leah Phillips, of the city of Philadelphia, State of Pennsylvania, surviving executrix of the last will and testament of Joseph Simon, deceased, of the one part, and Simon Gratz, of the same place, merchant, of the other part, witnesseth: That said Leah Phillips, surviving executrix as aforesaid,

for and in consideration of the sum of seven hundred dollars, lawful money of the United States of America, unto her well and truly paid, by the said Simon Gratz, at or before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, conveyed and confirmed, and by these [presents] doth grant, bargain, sell, alien, enfeoff, release, convey and confirm, unto the said Simon Gratz, and to his heirs and assigns, all the three following lots or pieces of land, situate in the city of Lancaster, and State aforesaid; the first, containing in front, on Chesnut street, sixty-four feet four inches and one-half inch, and in depth to a fourteen feet alley, two hundred and forty-five feet; bounded north by Chesnut street aforesaid; on the east, by a fourteen feet alley; on the south, by said fourteen feet alley; and on the west, by lot No. 364, being numbered in the plat or general plan of the city of Lancaster, No. 365. One other lot or piece of land, containing in front, on Chesnut street aforesaid, sixty-four and one-half inches; and in depth, to a fourteen feet alley, two hundred and forty-five feet; bounded on the north by Chesnut street aforesaid; on the east, by lot No. 364; on south, by a fourteen feet alley; and on the west, by lot No. 366, being numbered in the said plan of said city of Lancaster, No. 365; and the third and last lot or piece of land, containing in front, on Chesnut street, sixty-four feet four inches and one-half inch; and in depth, to a fourteen feet alley, two hundred and forty-five feet; bounded on the north by said Chesnut street; on the east, by said last mentioned lot No. 365; on the south, by said fourteen feet alley; and on the west, by Mulberry street, No. 366; the said three lots or pieces of land being the same lots which Joseph Simon, by good and lawful assurance, became seized in his demesne as fee, and being so thereof seized, died, having first made his last will and testament, bearing date the sixth day of October, anno domini one thousand seven hundred and ninety-nine, wherein and whereby, among other things, he did devise, order, and direct, as follows: It is my will, and as soon as it may be conveniently done after my decease, I order and direct, that my executor and executrixes, the survivor or survivors of them, shall sell and dispose of, either by public or private vendue or sale, as they shall think most advantageous, all my real and personal estate, whatsoever and wheresoever, which shall not herein be otherwise directed or disposed of. I order my said executor and exectrixes, the survivor or survivors of them, on receipt of the purchase money of the balance thereof, or on being fully satisfied that all the terms of sale have been complied with, to make and execute the necessary deeds and conveyances for securing such premises to the purchaser or purchasers, agreeably to the terms of sale or bargain; all which deeds shall be valid and effectual against my heirs, and all claiming under me or them; and of his said last will and testament did nominate, constitute, and appoint, his son-in-law, Levi Phillips, executor, and his daughter, Belah and Leah, executrices; and the said Levi Phillips and Belah, his daughter, have since died, and the execution of the said will now remains with Leah Phillips, (party hereto,) surviving executor of

the last will and testament of the Joseph Simon, deceased, together with all and singular the improvements, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances, whatsoever, thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim and demand, whatsoever, of him, the said Joseph Simon, in his lifetime, in law, equity, or otherwise howsoever, of, in, and to, the same, and every part thereof; to have and to hold the said three above described lots of ground, with the hereditaments and premises hereby granted or mentioned, and intended so to be, with the appurtenances, unto the said Simon Gratz, his heirs and assigns, to and for the only proper use and behoof of the said Simon Gratz, his heirs and assigns, forever, under and subject to the yearly and annual ground rent of fourteen shillings sterling, money of Great Britain, issuing yearly and every year, out of each and every of the said three lots or pieces of land above mentioned, due and payable to proprietary or proprietaries thereof. And the said Leah Phillips, surviving executor as aforesaid, her heirs, executors, and administrators, doth, by these presents, covenant, grant, and agree, to and with the said Simon Gratz, his heirs and assigns, that she, said Leah Phillips, and her heirs, all and singular, the hereditaments and premises, herein above described and granted, or mentioned and intended so to be, with the appurtenances, unto the said Simon Gratz, and his heirs and assigns, against her, the said Leah Phillips, surviving executrix as aforesaid, and her heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same, or any part thereof, by, from, or under the said Leah Phillips, shall and will warrant and forever defend. In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals, dated the day and year first above written.

LEAH PHILLIPS. [SEAL.]

Sealed and delivered in the presence of us :
ISAAC PRINCE,
A. PETTIT.

Received the day of the date of the above indenture, of the above named Simon Gratz, the sum of seven hundred dollars, in full of the consideration above mentioned.

LEAH PHILLIPS.

Witness at signing :
ISAAC PRINCE.

PHILADELPHIA, *ss :*

The sixth day of May, anno domini 1833, before me, an alderman in and for said city, Philadelphia, came the above named Leah Phillips, surviving executor of Joseph Simon, deceased, and acknowledged the above indenture to be her act and deed, and desired the same might be recorded as such.

A. PETTIT. [L. S.]

Recorded in the recorder's office of Lancaster county, in book B, vol. 5, page 2, &c., May 22, 1833.

[L. S.] Witness my hand and seal of office, at the city of Lancaster, said day and year.

JACOB PEELER, *Recorder.*

Endorsed—Deed, 6 May, 1833, Leah Phillips to S. Gratz.—No. 15.

No. 16.

This indenture, made the third day of April, in the year one thousand eight hundred and thirty-three, between Leah Phillips, of the city of Philadelphia, widow, surviving executrix of the last will and testament of Joseph Simon, late of the city of Lancaster, merchant, deceased, of the one part, and Simon Gratz, of the city of Philadelphia, merchant, of the other part. Whereas the said Joseph Simon was, in his lifetime, by virtue of sundry deeds, &c., invested with the legal estate to the first fourteen hereinafter described tracts of land, but the said Joseph Simon was beneficially interested in his own right only to the one moiety and the one-fourth parts of the said tract of land, as hereinafter mentioned, he holding the said legal estate in the other moiety, and the other one-fourth part, in trust for Michael Gratz, according to his, the said Joseph Simon's, declarations of trust; and whereas the said Leah Phillips, as executrix of the last will, &c., of the said Joseph Simon, has this day conveyed to Simon Gratz the one moiety and one-fourth part of the said tract of land, to which the said Michael Gratz, and his heirs, were in equity entitled, under said declaration of trust, and in which the said Michael Gratz *were* beneficially interested; and it is intended, upon the consideration passing between the parties hereto, now also to convey to the said Simon Gratz, the other moiety and the other one fourth part of the said tract of land, of which the said Joseph Simon was seized in his own right, equitably and beneficially, as well as in his legal estate; and it is also intended to convey to the said Simon Gratz three other tracts of land, the three herein last described tracts of the said Joseph Simon, of the legal estate in which the said Joseph Simon was seized in his lifetime, not subject to any trust. Now, therefore, this indenture witnesseth, that the said Leah Phillips, surviving executrix aforesaid, for and in consideration of the sum of one thousand five hundred dollars, lawful money of the United States of America, unto her at or before the sealing and delivering hereof, by the said Simon Gratz, well and truly paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, enfeoffed, released, and confirmed, and by these presents, by virtue of the power and authority given in and by the last will and testament of the said Joseph Simon, deceased, do grant, bargain, and sell, alien, enfeoff, release, and confirm, unto the said Simon Gratz, and to his heirs and assigns, one full equal and undivided moiety or half part of a certain tract of land, situate in Union county, in the State of Pennsylvania, containing two hundred and ninety-three acres and allowance, surveyed to William Cox; also one undivided moiety or half part of a certain

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tract of land, situate in Union county aforesaid, containing two hundred and thirty-six acres and three-tenths of an acre and allowance, surveyed to Charles Dunagan; also one undivided fourth part of a certain tract of land, situate in Union county aforesaid, containing four hundred and four acres and three-tenths of an acre and allowance, surveyed to Thomas Freet; also one undivided fourth part of a certain tract of land, situate in Union county aforesaid, containing three hundred and sixty-four acres and seven-tenths of an acre and allowance, surveyed in the name of James Ferguson; also one undivided moiety or half part of a certain tract of land in Juniata county, containing one hundred and sixty-five acres and four-tenths of an acre and allowance, surveyed in the name of Daniel Lawrence; also one undivided moiety or half part of a certain tract of land in Juniata county, containing three hundred and fourteen acres and three-tenths of an acre and allowance, surveyed in the name of James Wilkes; also one undivided moiety or half part of a certain tract of land, situate in Union county, containing one hundred and ninety-five acres and seven-tenths of an acre and allowance, surveyed in the name of James Hunt; also one undivided moiety or half part of a certain tract of land in Union county, containing two hundred acres and allowance, surveyed in the name of Phillip Palmer; also one undivided moiety or half part of a certain tract of land in Union county, containing one hundred and forty-three acres and seven-tenths of an acre and allowance, surveyed in the name of Samuel Laird; also one undivided fourth part of a certain tract of land, situate in Union county, containing one hundred and ninety-two acres and eighty-three perches and allowance, surveyed in the name of William Foster; also one undivided fourth part of the four next following tracts of land, situate in Bedford county, viz: one of them surveyed in the name of James Dayley, containing two hundred and sixty-nine acres and thirty-two perches; another of them in the name of Angus Macpherson, containing three hundred and thirteen acres and one hundred and twenty perches; another of them in the name of Alexander Duglass, containing three hundred and sixteen acres; and the other of them in the name of Thomas Hollowell, containing two hundred and eighty-three acres and one hundred and twenty perches. And also three certain tracts or pieces of land, situate in the county of Columbia, late Turbert township, in the county of Northumberland, in the State of Pennsylvania, one of them surveyed in the name of Michael Gratz, containing one hundred and seventy-seven acres and allowances; and of them surveyed in the name of Levi Andrew Levi, containing one hundred and forty-six acres; another of them surveyed in the name of Levi Andrew Levi, containing two hundred acres and allowance; together with all and singular the rights, members, and appurtenances whatsoever thereunto belonging or in any wise appertaining; and the reversions and remainder, rents, issues, and profits thereof, and all the estate, right, title, and interest which were of him, the said Joseph Simon, at and immediately before his decease, in law, equity, or otherwise howsoever, of, in, and to the premises hereby granted; and also all moneys,

principal and interest, due and to grow due, on all lands sold or contracted to be sold to any person or persons whomsoever, either by the said Joseph Simon in his lifetime, or by his executors since his decease; and all moneys which may have arisen from any such sales in the hands or possession of any person or persons whatsoever; to have and to hold, receive, take, and enjoy all and singular the premises hereby granted, with the appurtenances, unto the said Simon Gratz, his heirs and assigns, to his and their only proper use and behoof forever.

In witness whereof the said Leah Phillips, principal surviving executrix aforesaid, hath hereunto set her hand and seal, dated the day and year first above written.

(Signed) LEAH PHILLIPS.

Sealed and delivered in presence of us. The word "is," on the 25th line, being first inserted.

(Signed) J. Moss,
Lyon Joseph Levy.

Received the day of the date of the above written indenture, of the above named Simon Gratz, the sum of one thousand five hundred dollars, being the full consideration money above mentioned.

LEAH PHILLIPS.

April 3, 1833.

Witness at signing—
(Signed) J. Moss.

The third day of April, A. D. 1833, before me, the subscriber, an alderman of the city of Philadelphia, came the above named Leah Phillips, acknowledged the above written indenture to be her act and deed, and desired that the same might be recorded as such.

Witness my hand and seal.

(Signed) A. PETTIT, *Alderman*.

Union county, *ss:*

Recorded in the office for recording of deeds in and for the said county, in deed book I, page 160.

Witness my hand and seal of office at New Berlin, the 16th day of May, A. D. 1833. SAMUEL ROUCH, *Recorder*.

Columbia county, *ss:*

Recorded in the office for recording of deeds in and for the said county, in deed book F, pages 371, 372.

In testimony whereof I have hereunto set my hand and seal of the said office this 24th day of May, A. D. 1833.

JOHN COOPER, *Recorder*.

This indenture, made the twenty-fourth day of April, in the year one thousand eight hundred and thirty-three, between Leah Phillips, of the city of Philadelphia, widow, surviving executrix of the last will and testament of Joseph Simon, late of the city of Lancaster, merchant,

deceased, of the one part, and Simon Gratz, of the city of Philadelphia, merchant, of the other part, witnesseth:

That the said Leah Phillips, surviving executrix aforesaid, for and in consideration of the sum of one thousand dollars, lawful money of the United States of America, unto her, the said Leah Phillips, at the execution hereof, by the said Simon Gratz well and truly paid, the receipt whereof is hereby acknowledged, she, the said Leah Phillips, hath granted, bargained, and sold, released and confirmed, and by these presents doth grant, bargain, and sell, release and confirm, unto the said Simon Gratz, and to his heirs and assigns, one full, equal, and undivided moiety or half part of a certain tract or piece of land, situate in Union county, in the State of Pennsylvania, containing two hundred and ninety-three acres and allowance, surveyed in the name of William Cox; also one full, equal, and undivided moiety or half part of a certain tract of land, situate in Union county aforesaid, containing two hundred and thirty-six acres and three-tenths of an acre and allowance, surveyed in the name of Charles Dunagan; also one full, equal, and undivided fourth part of a certain tract of land, situate in Union county aforesaid, containing four hundred and four acres and three-tenths of an acre and allowance, surveyed to Thomas Freet; also one full, equal, and undivided fourth part of a certain tract of land, situate in Union county aforesaid, containing three hundred and sixty-four acres and seven-tenths of an acre and allowance, surveyed in the name of James Ferguson; also one full, equal, and undivided moiety or half part of a certain tract of land, situate in Juniata county, containing one hundred and sixty-four acres and four-tenths of an acre and allowance, surveyed in the name of Daniel Lawrence; also one full, equal, and undivided moiety or half part of a certain tract of land, situate in Juniata county, containing three hundred and fourteen acres and three-tenths of an acre and allowance, surveyed in the name of James Wilkes; also one full, equal, and undivided moiety or half part of a certain tract of land, situate in Union county aforesaid, containing one hundred and ninety-five acres and seven-tenths of an acre and allowance, surveyed in the name of James Hunt; also one undivided moiety or half part of a certain tract of land, situate in Union county aforesaid, containing two hundred acres and allowance, surveyed in the name of Phillip Palmer; also one equal and undivided moiety or half part of a certain tract of land, situate in Union county aforesaid, containing one hundred and forty-three acres and seven-tenths of an acre and allowance, surveyed in the name of Samuel Laird; also one undivided fourth part of a certain tract of land, situate in Union county aforesaid, containing one hundred and ninety-two acres and eighty-three perches, surveyed in the name of William Foster; also one undivided fourth part of the four next following tracts of land, situate in Bedford county, viz: one of them surveyed in the name of James Daily, containing two hundred and sixty-nine acres and thirty-two perches; another of them in the name of Angus Macpherson, containing three hundred and thirteen acres and one hundred and twenty perches; another of them in the

name of Alexander Douglass, containing three hundred and sixteen acres; and the other of them in the name of Thomas Hallowell, containing two hundred and eighty-three acres and one hundred and twenty perches; together with all and singular the rights, members, and appurtenances whatsoever thereunto belonging, or in any wise appertaining; to have and to hold all and singular the premises hereby granted and released, with the appurtenances, unto the said Simon Gratz, his heirs and assigns, to and for the only proper use and behoof of the said Simon Gratz, his heirs and assigns, forever.

In witness whereof the said Leah Phillips hath hereunto set her hand and seal; dated the day and year first above written.

(Signed) LEAH PHILLIPS. [L. S.]

Sealed and delivered in the presence of us—

JOHN G. THOMSON,
A. PETTIT.

Received the day of the date of the above written indenture, of the above named Simon Gratz, the sum of one thousand dollars, being the full consideration money above mentioned.

(Signed) LEAH PHILLIPS.

Witness at signing—

JOHN G. THOMSON,
A. PETTIT.

The twenty-fourth day of April, A. D. 1833, before me, the subscriber, an alderman of the city of Philadelphia, came the above named Leah Phillips, and acknowledged the above written indenture to be her act and deed, and desired the same might be recorded as such.

A. PETTIT, *Alderman.*

UNION COUNTY, *ss:*

Recorded in the office for recording of deeds in and for said county, in deed book H, page 161.

Witness my hand and seal of office, at New Berlin, the 16th day of May, A. D. 1833.

(Signed) SAMUEL ROUCH, *Recorder.*

Endorsed, 24th April, 1833. Deed, Leah Phillips, executrix to Simon Gratz, for lands in Union, Juniata, and Bedford counties, Pennsylvania, consideration $1000.—No. 17.

18.

Dr. *Mrs. Leah Phillips in account with Simon Gratz.* Cr.

1833.			1835.		
March 19	To cash - -	$200 00	Feb. 13	By considerat'n for land -	$1500 00
April 8	Do - -	300 00		⅓ hand.	
1834.				⅓ in 1 year.	
April 4	Do - -	250 00		⅓ in 2 years.	
Sept. 4	Do - -	100 00		By bal. of inter.	32 65
Sept. 26	Do - -	150 00			
1835.					
April 7	Do - -	300 00			
1846.					
March 29	Do - -	100 00			
	Balance - -	132 65			
		$1532 65			$1532 65
				By balance	$132 65

Received July 20th, 1836, of Simon Gratz, one hundred and thirty-two dollars 65 cents in full.

(Signed) LEAH PHILLIPS.

Test. (Signed) J. B. PHILLIPS.

Interest to 24th June, 1836.

Dr.	0 3 35	$39 16
On $200 due 19th March, 1833 - - -	3 2 16	57 79
300 due 8th April, 1833 - - -	2 2 20	33 33
250 due 4th April, 1834 - - -	1 9 20	10 83
100 due 4th Sept., 1834 - - -	1 8 28	15 69
150 due 26th Sept., 1834 - - -	1 2 17	21 84
300 due 7th April, 1835 - - -	0 2 25	1 41
100 due 29th March, 1836 - - -	–	32 65
Balance to credit above account - - -		$212 70
Cr.	3 4 11	$100 90
On $500 due 13th February, 1833 - - -	2 4 11	70 90
500 due 13th February, 1834 - - -	1 4 11	40 90
500 due 14th February, 1835 - - -		$212 70

Endorsed. Statement of account with Leah Phillips, and the receipt for $132 65, being balance due her 20th July, 1836. No. 18.

No. 19.

List of papers delivered by Mrs. Leah Phillips.

Account of Ephraim Blain with Joseph Simons, April, 1793.
Cancelled deed, Levi Phillips, Leah Phillips, and Bell Cohen, to Joseph S. Cohen, for two tracts of land, Turbot township.
Deed, Martin Withington to Joseph Simons, for two tracts, Turbot township, 7th July, 1789.
Patent, Levi Andrew Levi, for two tracts of land, 177 acres.
No. 16, Levi Andrew Levi, Northumberland county, 148 acres.
No. 16, Levi Andrew Levi, tract of land, 200 acres.
Patent, Joseph Simons, for one tract of land, 322 acres, called Desolation, No. 302.
James Haseltine, esq., to Joseph Simons, lease for lot No. 365.
Patent to J. F. Mifflin, for tract of land, name of Thomas Freet.
Deed, Martin Withington to Joseph Simons, for 2 tracts of land, estate and trust.
Deed, Martin Withington to Joseph Simons, for 1 tract, Henry Airs.
Deed, Martin Withington to Joseph Simons, for 1 tract, Samuel Laird.
Deed, Sol. Etting and wife do., for tracts named P. Palmer.
Deed, Sol. Etting and wife do., for tracts named S. Laird.
Deed, John Davis and wife to Math. McConnel, for 2 tracts of land, named James Wilks.
Two patents to Math. McConnel. Daniel Laurence for same.
Matthew McConnel to Patrick Lawey and Mary McCallister, endorsed by conveyance to George Moore.
George Moore and wife to Joseph Simons.
Release, Epinelus Hart to Joseph Simons.
Mortgage, William Trent to David Franks and Joseph Simons.
Bond, same to same.
Copy, conveyance James Hunt to W. Cox.
Conveyance, Daniel Laurence to William Trent.
Engagement, David Franks and Joseph Warder to William Trent and George Croghan.
Several drafts of surveys of Middle Creek land.
Lease, James Hamilton to John Gorner.
Lease, Thomas Cookson to J. N. Ricus and Joseph Simons.
Lease, James Hamilton to Maurice Bound.
Power attorney, L. A. Levy to Joseph Simons.
Lease to William Steen by Joseph Simons.
Deed, Levi Phillips, Leah Phillips, and Belah Cohen, executors, to William Steen and John Sloan, for lands in Hemlock township, Northumberland county.
Drafts of the above lease.

Endorsed. List of papers, D, delivered by Mrs. Leah Phillips. No. 19.

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No. 20.

Whereas Joseph Simon, of the borough of Lancaster, some time past bought of George Davis, trustee of the estate of Levy & Franks, a certain debt due from Thomas Mitchell to said Levy & Franks, amounting as then supposed by Joseph Simon's information, to four hundred and fifty-five pounds, for which he gave eight shillings and one penny half-penny in the pound on the above sum, and took an assignment from the said George Davis of all Levy and Franks' right and interest in a tract of land which had been conveyed by said Mitchell for the benefit of his creditors.

And whereas it has since appeared, by more closely investigating the books of the said Levy & Franks, that the debt due by Thomas Mitchell was six hundred seventy-nine pounds five shillings and eight pence, at the time of the said purchase, under a bond in the possession of the said George Davis of the said Mitchell's to said Levy and Franks for fifty-six pounds one shilling and four pence: I do therefore hereby agree, on behalf of the said Joseph Simon, that if it shall be established that the said sum is due from the said Mitchell, that the said Joseph Simon shall account with and pay the said George Davis after the same rate in the pound as before mentioned for every pound of principal so found due and owing above the four hundred and fifty-five pounds aforesaid. And in default of the said Joseph Simon complying with this agreement, I hereby undertake and engage to pay it for him.

Witness my hand this 31st December, 1794.

Received, 31st December, 1794, of George Davis, a bond of Thomas Mitchell, sr., to Nathan Levy and David Franks, dated 14th August, 1753, for fifty-six pounds one shilling and one pence, which, if it shall appear is not included in the before mentioned sum of six hundred seventy-nine pounds five shillings and eleven pence, I do hereby agree, for Mr. Simon, that he shall pay for at the rate of 8½ pr. £, in manner before mentioned; and, in default of Mr. Simon's paying it, I will return the said bond.

I, Joseph Simon, do hereby engage to keep Simon Gratz harmless and clear of the within, and engage to comply with the stipulations as signed by S. Gratz to George Davis, Lancaster, April 18th, 1795; and have received the bond from Thos. Mitchell to Nathan Levy and David Franks, for fifty-six pounds ¼.

JOSEPH SIMON.

Endorsed: Davis' indemnity—No. 20.

No. 21.

LANCASTER, *January* 24, 1794.

DEAR MICHAEL: I enclose you per *dis*patch, and to which please refer; and since which I have received from Mr. Lowrey a letter with a copy of an advertisement for the Denegall Place, and which I will not have

printed until I receive your answer to this. I have now to request you to call on the person who has power to settle the affairs of the estate of David Franks, and propose for the amount *principle* of his debt against Mitchell's estate, a like proportion as I gave to E. Shippen's, and which was about 6s. 9d. in the pound, (and of which they can be informed by applying to Mr. Shippen;) and, should they accede to the proposition, you can have a written agreement drawn up and sign[ed] in behalf of me—the money to be paid in 60 or 90 days. Your particular attention to this business and immediate answer is requisite, as Mr. Lowrey wishes the place advertised next week. I defer going to Carlisle before the arrival of the next post. Should Mr. Duncan still neglect to send the papers, [I] shall leave this on Sunday week for that place. The amount of Mr. Frank's debt against Mitchell's estate is about £450. Please give my love to and family, in which my wife joins. I am yours, &c.,

JOSEPH SIMON.

Endorsed: 24th January, 1794. J. Simon to M. Gratz. No. 21.

No. 22.

Lands purchased from Leah Phillips.

1833.	Dr.		
April 24	To Leah Phillips, for lands purchased from her, per her deed to me - -		$1,500 00
"	Leah Phillips, for expenses incurred by her - - - - -		50 00
June 12	paid expenses to lands - - -		58 03
29	paid cost of deeds and recording the same.		
Sept. 17	paid expenses of express to N. Middleswarth, suit v. Weeks.		
1834.			
June 17	paid for advertising notice.		
1835.			
May 25	N. Middleswarth, for amount paid to H. Goss, for building a new barn on tract of land —name of L. Palmer -	$40 00	
	Amount due Commonwealth above $200 for patenting tract of land in name of P. Palmer, sold to H. Goss and H. Ritter - - -	22 45	
	Amount of his commission for selling and collecting -	66 55	
			129 00
1836.			
April 19	By paid W. W. Potter for fee in case vs. Weeks - - - -		100 00

No. 22.—Continued.

June 30	By paid W. Kitchen for serving notices on tenants - - - -		$2 50
Aug. 24	paid witnesses Cattawissa lands -		2 00
Sept. 15	paid recording, mileage, James Robb -		2 62
1839.			
Mar. 16	paid clerk of district court, for copy of bill in equity, Cohen et al. vs. Gratz,		67 65
June 27	&c. N. Middleswarth, for the following:		
	paid Henry Goss, for building a barn on Philip Palmer's tract	$20 00	
	shingles and nails for do. -	30 00	
	J. Engle, for surveying -	11 00	
	Jno. Weeks, witness - -	6 90	
	recording mortgages, &c. -	6 13	
	prothonotary in Lewistown -	46 37	
	J. Engle, for surveying -	22 00	
	Wm. Baker, witness - -	3 00	
	Jno. Weeks, do. - -	1 25	
	expenses at Lewistown, &c., and attending suit v. Hines -	50 00	
	expenses to Cattawissa lands -	10 00	
	commissions on lands sold -	170 56	
			377 25
July 5	paid for cost of papers at Lancaster -		18 81
10	paid W. M. Meredith and W. B. Reed for fee in suit Cohen v. Gratz -		400 00
			$2,745 40
	Cr.		
1833.			
June 12	received from N. Middleswarth, on account of sales of lands to Bechel -		34 38
	received from do. on account of rents of G. Knap and J. Gill - -		20 50
	received for orders of Leah Phillips on Sam'l Buck, for sales of lands -		359 11
	received from E. L. Anderson, for moiety of four tracts of land:		
	1 tract, name of Jas. Dayley, 269 as. 32 ps.		
	1 do. do. A. McPherson, 213 20		246 20
	1 do. do. A. Douglass, 316		
	1 do. do. T. Hallowell, 233 100		
	N. Middleswarth and J. Fern, for one-half part of tract of land, in names of Jas. Ferguson, 364 as. 7 ps. - -		700 00

No. 22.—Continued.

June 16	By received from N. Middleswarth, on account of sale of land to Bechel - - -	$34 37	
	Deduct his commissions -	14 37	
			$20 00
1835.			
Feb. 17	H. Goss and H. Ritter, for tract of land in name of P. Palmer, 200 acres, sold for $1,300: $800 payable 1st April, 1835; balance in five annual instalments. Received on account -		1,050 00
	John Weedner, for one-half of tract of land in name of Thos. Freet, 404 as. 65 ps., sold for $1,100: $550 payable 15th April, 1835; $50, payable 1st April, 1836; $500 payable in five annual instalments. Received on acc't -		700 00
1836.			
Aug. 24	Jas. Robb, for 2 tracts land in Mifflin county—1 tract, name of D. Lawrence, 164 4/10; 1 tract, name of Jas. Wilkes, 314 4/10 - - -		2,400 00
	W. G. Hurley and George A. Frick, for 1 tract of land in Columbia county, name [of] M. Geak, 177 as.; 1 do. do., S. A. Levy, 148 as.; 1 do. do. do. 200 as. - - - -		2,100 00
1839.			
—— 27	The following sales made by N. Middleswarth:		
	Charlotte Marguerite, 117 as. 122 ps., part of tract in name of W. Cox, sold for $706 57: payable 1st April, 1836 - - -	$353 28	
	1st April, 1837 - -	117 76	
	1st April, 1839 - -	117 76	
	1st April, 1840 - -	117 76	
	received on account - -		353 28
	[Account omitted here inserted at bottom of page.]		
	Daniel Fissler, 12 as. 74 ps., part of tract in name of W. Cox, sold for $109 03: payable 1st April, 1836 -	54 51	

	1st April, 1837 - -	$18 17	
	1st April, 1839 - -	18 17	
	1st April, 1840 - -	18 17	
	received on account -	-	$54 51
	Daniel Price, 24 as. 149 ps., part of tract in name of W. Cox, sold for $149 58, payable 1st April, 1836 -	$74 79	
	1st April, 1837 - -	24 93	
	1st April, 1838 - -	24 93	
	1st April, 1839 - -	24 93	
	received on account -	-	74 79
	Adam Boeher, 9 as. 107 ps., part of tract in name of W. Cox, sold for $84 87, payable 1st April, 1836 -	$42 43	
	1st April, 1837 - -	21 22	
	1st April, 1838 - -	21 22	
	received in full - -	-	84 87
	Nicholas Ruts, 22 as. 73 ps., part of tract in name [of] W. Cox, sold for $190 87; payable 1st April, 1836 -	$63 62	
	1st April, 1837 - -	63 62	
	1st April, 1838 - -	63 63	
	received on account -	-	127 24
	Isaac Gerhart, 33 as. 90 ps., part of tract in name of W. Cox, sold for $293 68; payable 1st April, 1836 -	$146 84	
	1st April, 1837 - -	48 95	
	1st April, 1839 - -	48 95	
	1st April, 1840 - -	48 94	
	received on account -	-	146 84
	carried over - - -	-	$8,471 72
1839.	By amount brought forward -	-	$8,471 72
June 27	the following sales made by N. Middleswarth:		
	John Lehu, 112 as. 20 ps., part of tract in name of W. Cox, sold for $672 75; payable 1st April, 1836 -	$336 37	
	1st April, 1837 - -	84 09	
	1st April, 1338 - -	84 09	

No. 22.—Continued.

1st April, 1839 - -	$84 09	
1st April, 1840 - -	84 09	
received on account -	-	$336 37
[Account omitted here inserted at the end of this account.]		
John Baker, 59 acres 16 ps., part of tract in name [of] Jas. Hunt, sold for $354 59; payable 1st April, 1837 -	$177 29	
1st April, 1838 - -	44 33	
1st April, 1839 - -	44 33	
1st April, 1840 - -	44 33	
1st April, 1441 - -	44 33	
received on account -	-	265 95
Jacob Spiglemyer, 57 as. 115 ps., part of tract in the name of Jas. Hunt, sold for $346 31; payable 1st April, 1837	$173 15	
1st April, 1838 - -	43 29	
1st April, 1839 - -	43 29	
1st April, 1840 - -	43 29	
1st April, 1841 - -	43 28	173 15
received on account -	-	
Daniel Kochs, 47 as., 94 ps., part of tract in name of James Dunagan, sold for $285 52; payable 1st April, 1837 - - -	$142 76	
1st April, 1838 - -	47 59	
1st April, 1839 - -	47 59	
1st April, 1840 - -	47 59	142 76
received on account -	-	
Geo. Ritter, 156 as. 139 ps., part of tract in name of Chs. Dunagan, sold for $1184 95; payable 1st April, 1837 -	$592 47	
1st April, 1838 - -	197 49	
1st April, 1839 - -	197 49	
1st April, 1840 - -	197 49	669 87
received on account -	-	
Jacob Stumpf, 36 as. 67 ps, part of tract in name of Chs. Dunagan, sold for $218 51; payable 1st April, 1837 -	$109 25	

No. 22.—Continued.

	1st April, 1838 - -	$36 42	
	1st April, 1839 - -	36 42	
	1st April, 1840 - -	36 42	
	received on account - -		$95 00
No. 22.	Sales of land purchased from Leah Phillips		$10,622 58

Endorsed: No. 1, circ. ct., Apr. s., 1839. Cohen & al. v. Gratz & al. Answer of S. Gratz's executors.
Filed 23d November, 1839.

	George Kelly, 103 acres 152 ps., part of tract in name of James Hunt, sold for $623. 68; payable 1st April, 1837	$311 84	
	1st April, 1838 - -	77 96	
	1st April, 1839 - -	77 96	
	1st April, 1840 - -	77 96	
	1st April, 1841 - -	77 96	
	received on account -		$467 76

Circuit court, U. S., April sessions, 1839.

COHEN vs. GRATZ. } No. 1.—In equity.

On motion of Benj. Tilghman, esq., the court grant a rule to shew cause why the executors of Simon Gratz should not file in the office of the clerk of the court the papers, documents, and accounts admitted by them to be in their possession, to wit, the several papers from which the copies No. 1 to 21, inclusive, appended to their answer, were made; letters from N. Middleswarth; copy of letters to him, if in their possession or power; the correspondence with E. L. Anderson, from whom it is stated, in the account annexed to the answer, certain sums of money were received by the said Simon Gratz; also the papers, a list of which is appended to their answer, No. 19; a paper endorsed by Simon Gratz; list of papers delivered by Mrs. Leah Phillips for the inspection of the complainants, and their solicitor, the same being requisite in order to prepare exceptions to the answers.

Rule returnable on Wednesday next, at 11, A. M.

Circuit court, U. S., Apr. session, 1839.

COHEN vs. GRATZ.

On motion of Benj. Tilghman, esq., the court grant a rule to shew cause why Leah Phillips should not deposit in the office of the clerk of the court the original agreement made the 13th February, 1833, and all the papers and documents belonging to the estate of Joseph Simon, deceased—it being admitted, in her answer, the trunk of papers was returned to her by L. J. Levy, after certain papers had been taken therefrom by Simon Gratz—for the inspection of the complainants, and their solicitor, the same being requisite in order to prepare exceptions to the answers.

The rule returnable on Wednesday next, at 11, A. M.

Endorsed—No. 1. circuit court, April session, 1839; Cohen and al. vs. Gratz and al.; rule on exrs. S. Gratz, and on Leah Phillips, to shew cause, &c.; filed 6th January, 1840.

Afterwards, to wit, on the eighth day of January, 1840, rule absolute as to the executors of Simon Gratz, and time for complying with it extended to the first Monday in March next, except as to the original papers which are to be deposited at once in the clerk's office.

PHILADELPHIA, *June 24th*, 1833.

NER MIDDLESWARTH, esq., *Beavertown, Union county*.

Enclosed you will find a copy of drafts of Middle creek and Jack creek lands, with power of attorney to you; you will be pleased to give leases in conformity to the power to such of the tenants as you approve of; the amount of rents to [be] expended in such necessary improvements, as you shall judge will be for the interest of the lands ultimately. I should like that they should each be bound to manure with lime, (which I believe such lands would bear about 40 bushels to the acre;) until these lands are bettered by judicious culture, it is unlikely they would sell for much; in thus placing my views with you, I have only to add, that I will feel infinitely obliged to you if you will do, in regard to leasing them, as if they were your own. In the case of John Weeks, I found that the case had never been tried, owing to the want of proof of a tender of the deed, patent, &c. This tender was done by Mr. Anderson before his death, and he left a memorandum to that effect, but as it was not sworn to by him before his death, it could answer no purpose. I annex a memorandum (of Mr. Anderson's) and will thank you to get a legal admission from Mr. Weeks of the facts, when the case will be brought to trial without delay. I shall be pleased to settle with the Feese family, either by taking back the moiety of the lands, or selling it to them at a reasonable price. On this head I shall be pleased to receive propositions. On receiving the annexed paper, acknowledging or proven before a justice, I will put all the papers in the hands of Wm. Potter, esq., and Mr. Blanchard.

Yours, SIMON GRATZ.

1848.

On the day of , 1833, I, John Weeks, above named, do acknowledge that on the 22d Sept., 1818, A. A. Anderson, esq., tendered to me title from executors of Joseph Simon, for a tract of land, surveyed in the name of Wm. Cox, containing 293 acres, on Middle creek, which tract of land I entered into an agreement with said executors for the purchase of on the 28th day of May, 1805, and that Mr. Anderson demanded of me the purchase money, which I was unable to pay; and the whole contents of the proffer above written, signed as a copy of a proffer in the handwriting of A. A. Anderson, is entirely true and correct.

Witness present.

PHILADELPHIA, 2*d July*, 1833.

NER MIDDLESWARTH, esq., *Beavertown, Union county.*

I wrote to you on the 24th ult., since which I am in receipt of your favor of the 26th inst., advising of an attempt to sell, as Daniel Maser's property, the tract of land surveyed in the name of Thomas Freel, moiety of which belonged [to] Mr. Mifflin, and suit was brought in Mifflin county by ejectment, and the lands recovered, and is now, as I believe, leased by you to the present tenants. As the agent of the owners, you will, therefore, be pleased to attend at the time of sale, and give notice that the title and possession to the land is now in me and Samuel Breck, and of which notice please keep a copy; and that Daniel Maser has no right or interest therein.

Yours, SIMON GRATZ.

PHILADELPHIA, *July* 21*st*, 1833.

NER MIDDLESWARTH, esq.,
Beavertown, Union county.

I addressed you under date of 24th of June, enclosing to you a power of attorney, also instructions; and since which your favor of 26th June came to hand, and [to] which I replied under date 2d inst. I now forward to you the United States Gazette of 29th inst., containing on its first page a notice from J. S. Cohen, and others, the children of Mrs. Bell Cohen; and on the 3d page of the same, Mrs. Leah Phillips' notice; to both these I beg you to refer—the latter states the facts of a fair and bona fide sale to me.

This course of the Cohens is dictated by the worst principles, and entirely void of truth and common honesty. The lands in your county were originally, in the year 1791, purchased by Joseph Simon, for his and Michael Gratz's account, and each paid their share of purchase money. The deed from [the] sheriff of Northumberland county for them was taken in the name of J. Simons, who executed a deed of declaration of trust, (and which is recorded in Union county,) engaging to pay over to Michael Gratz the half of the sums received on all sales, or to convey the lands, M. G's moiety, when required so to do, during the lifetime of J. Simon, who was as honest and moral a man as ever

existed. My father, and those acting for him, desired that the title should remain in Jos. Simon, to facilitate sales. He died in 1804, having made his will, directing his executors, named, viz., Levy Phillips, Leah Phillips, and Belah Cohen, to sell all his lands; when this event occurred, on behalf of my father, I demanded from the executors a conveyance of my father's interest. This I could not obtain. Instead of complying, the executors proceeded to sell the lands, all for which purchasers could be found, and received purchase money; for some in full, and for others in part. In the year 1807 I brought suit for this, which, by management and chicanery, was delayed in the courts up to the year 1823, when the executors of J. Simon entered into an amicable reference to fix the sum due on this land. The referees reported. From this report they appealed; finally, the cause was decided by the supreme court, in 1831, against the executors, as trustees, confirming our judgment for upwards of 8,000 dollars; (this case is fully reported in Sergeant and Rawle;) and which judgment remains unsatisfied. Of the money arising from these sales, Mrs. Cohen and her sons received such sums as at this time, including interest, amounts to upwards of 6,000 dollars. Levi Phillips and Belah Cohen died, leaving Mrs. L. Phillips the only surviving executrix, and, consequently, the only person who had power to act. She called on me in October last, and expressed a desire to settle the law suits, and proposed selling the interest of her father to me in the lands, and to make a deed for my father's interest in them. Not being willing to treat with a lady, I advised her to appoint a gentleman, who was conversant in matters of business, on this subject. She accordingly sent to me Jno. Moss, esq., and L. J. Levy, with whom I contracted for the purchase. J. S. Cohen has petitioned the orphans' court to have Mrs. L. Phillips, the surviving executrix, removed, and prays to be appointed in her stead. This application will be argued in September next; in this it is impossible he can succeed; and I mention it merely as an elucidation of what I conceive to be Cohen's object, which is, that if he could be substituted, then he would have sold the property and received and pocketed the proceeds a second time; the fact of the sale to me he did not probably know at the time of his application for the removal of Mrs. Phillips.

The purchase I made was a fair one, and for which I paid more than I find the property to be worth. The deeds to me are on record in Union county. I shall hold the property, and when I find it saleable at what I believe its fair value, I will place the title on such ground to the purchasers that they will be free from all risk and apprehension. I hope you have got the papers sent to you, signed by John Weeks. In hopes of hearing from you early, yours,

SIMON GRATZ.

PHILADELPHIA, *August* 5, 1833.

NER MIDDLESWARTH, esq.,

Beavertown, Union county.

I am this day favored with your letter of the 29th ultimo. Perhaps

it would be well to grant leases in my name for the land, for the present year, on the terms of my last instructions, or on the terms of the leases granted in name of executrix of J. Simon, as you shall see fit. I have this day written to Mr. Blanchard and W. W. Potter, esq's, attorneys at law at Bellefont; they practise in Mifflin county. Copy of my letter is hereto annexed. The papers I will send to you from Dauphin county, where I expect to be by the 1st September, to attend opening the Lykin's Valley railroad. I am perfectly assured you will do the best for me with these lands, and so as to bring them into a good state of cultivation. I wish all their avails to be expended on them. The tract in which Mr. Breck is concerned ought to be treated in the same manner, if he would consent. He appears desirous of selling. What price do you think the tract is worth per acre? I thank you for the settlement with Weeks. Yours,

SIMON GRATZ.

WISCONISCO, *24th Sept.*, 1833.

NEB MIDDLESWARTH, esq.,

Beavertown, Union county.

This letter will be handed to you by my son Theodore, together with—

28 May, 1805.—Agreement between Levi Phillips and Leah Phillips, two executors of Joseph Simon, dec'd, and John Weeks, for tract of land surveyed name of Wm. Cox, 293 acres; consideration $2,051. Office draft of same.

8 Aug. 1806.—Patent to Levi Phillips, Leah Phillips, and Belah Cohen, executrix and executors, in trust.

22 July, 1818.—Deed . . . . . same to Jno. Weeks.

22 Sept., 1818.—Paper signed by A. A. Anderson, of credits due to John Weeks. Statement of balance due in handwriting [of] Levi Phillips. This account shows that J. Weeks paid on account of purchase:

1805, June 5, $300 00.

1806, Feb. 18, $432 80.

1815, Jan. 23, $185 00, made up with int. to 9 Aug.

1817.—Showing a balance then due, $2,255 26.

I have engaged Wm. W. Potter and John Blanchard to prosecute the suit of ejectment in common pleas, Mifflin county, No. 13, April term, 1819. They request that you should see them at Lewisburg at the November court. I also enclose to you *this* letter of 20 August last. You are aware of the importance of having the case tried with as little delay as possible, and I trust it will be disposed of at January term. I shall be obliged by your writing to me by my son, giving me such information on the subject of my lands as you shall think needful. I hope you have renewed the leases to tenants in my name. *Is* such lands as these improving in value? What price do you conceive they would sell for, if offered in time, principal bearing interest? Please mention to Potter and Blanchard that Levi Phillips and Belah Cohen are

dead; (Leah Phillips, sole surviving executrix;) this, probably, must be suggested before trial of the cause. Yours,

SIMON GRATZ.

PHILADELPHIA, *January* 1, 1834.

NER MIDDLESWARTH, esq.,

Beavertown, Union county.

Messrs. Potter and Blanchard ask for a power of attorney from me, to make deed and release to Hind. I send by mail to Lewistown, such power, directed to them or yourself, care of Mr. Elliott, which be pleased to and receive, if those gentlemen have not. I should greatly prefer receiving the balance due on this land, including interest, until paid, to a recovery of the land; and you are authorized to make such arrangement, on receiving the money, or a part—say half, or two-thirds, balance amply secured. Be pleased to take with you the account of balance forwarded to you in September last. By this account the balance due up to 9th August, 1817, was $2,255 26; the date of the tender of the deed was from which period interest on $2,051, the original purchase money, would be due up to the time of the proposed settlement. I hope you will now have this business brought to a close, either by getting the money or the lands. Please take all the papers with you to the court. Yours,

SIMON GRATZ.

PHILADELPHIA, *January* 20, 1834.

NER MIDDLESWARTH, esq.,

Beavertown, Union county.

I am much indebted to you for your favor of 10th inst., and note its contents. The declaration of trust, J. Simon to M. Gratz, is dated in January, 1804, and on record in Union county. It was placed on record in 1830, I think. A copy of Jos. Simon's will shall be with you in time. I am satisfied with the arrangements you have made in leasing the lands, and am obliged for your care, &c. I think it will be desirable for you to get Mr. Gomyer to prove the articles of agreement with Weeks, if you go there. I wish you would make a visit to the Wisconisco coal mines; they are a short distance from Millersburg, D. C. I expect to be there during the ensuing week, and shall be happy to see you. On the subject of the lands, of which you have drafts, be pleased to let me hear from you. Yours,

SIMON GRATZ.

PHILADELPHIA, *February* 28, 1834.

JACOB FEESE AND NER MIDDLESWARTH,

Beavertown, Union county.

I have this day received your favor of the 22d inst. I wish, in the business of this land, to do what is equitable; and I will be obliged to you to forward to me, per return mail, a copy of the evidence you refer

to, proving that Mr. Feese tendered to Mr. Phillips the balance due. This I must have to justify me in a settlement of my accounts. The interest on the sale, of course, must be calculated up to that period, and when I hear from you I shall be enabled to give my final answer. Please, also, send me the particulars of the sums paid, dates, &c.

Yours, SIMON GRATZ.

The account I have is:

1809, Sept. 9, - - - - - - - -	$133 35
1810, Aug. 25, - - - - - -	160 00
1813, Nov. 3, - - - - - - -	251 50
1817, Feb. 4, - - - - - - -	257 00
1818, Nov. 9, - - - - - - -	56 00
	$857 85
1825, Dec. 12,	80 00
	$937 85

PHILADELPHIA, *March* 13, 1834.

NER MIDDLESWARTH AND JACOB FEESE,
Beavertown, Union county.

I have your favor of the 8th inst. In my letter of 28th ult., I stated the account of sums furnished by Mr. Phillips, and received by him, on account of the land sold Peter Fiss, the whole amounting to $937 85, and the last payment made on 12th December, 1825. The tender of the balance, I presume, must have been made after that payment. My object was to ascertain the balance due, bearing interest, up to the time of the tender, and to have fixed that balance as the amount which ought to [have been] paid for the title, and which would amount to a considerable sum. As there may be some difficulty in fixing all this, I propose to take eight hundred dollars, as a purchase, for the moiety of the James Ferguson tract, payable at the time you mention, or 15th April next. I will execute deed on its being forwarded to me. I hope this proposition will be thought reasonable, and that it will meet your approbation.

Yours,
SIMON GRATZ.

DEAR SIR: I have written to Mr. Potter, and enclosed to him the certified will of Joseph Simon. You have a newspaper containing J. S. Cohen and others' publication, and Mrs. Phillips. This may be wanted on the trial. No course Mr. C. can take in the least surprises me; he is capable of doing any thing which an honorable man would blush to think of; this being his course, it will require watchfulness on our part.

Yours,
S. G.

PHILADELPHIA, *April* 10, 1834.

NER MIDDLESWARTH AND FEESE,
Beavertown, Union county.

I am in receipt of your favor of the 6th inst., and note its contents. The sum of eight hundred dollars named by me for the land, a moiety of the James Ferguson tract, I have estimated at the lowest price at which I should be inclined to dispose of it; for even estimating the payments which you state to have been made on the purchase by Peter Feese the actual balance due on that purchase would considerably exceed this sum. But in making you this offer, I duly consider the amount you have previously stated to have been paid at upwards of $1,269; your present account fixes this at $1,134 50. Should you not be enabled to pay the whole sum in the next month, the residue, payable on the 1st April next with interest, secured by bond and mortgage on the premises. The expenses incurred on suit, and yet due, to be paid by you. If these terms are accepted, I will transmit deed to you by my son, who will be in your county in early part of ensuing month.

Yours,
SIMON GRATZ.

PHILADELPHIA, *April* 30, 1834.

NER MIDDLESWARTH AND JACOB FESEE,
Beavertown, Union county.

Above you have duplicate of my last respects under date of the 10th inst. I shall leave here on the 2d May next for Bear Gap coal mines, Lyken's valley, where I shall remain during all of next week, and will feel pleased if Mr. Middleswarth can meet me there. His best and direct route would be to cross at Georgetown, and from thence to Bear Gap.

Yours,
SIMON GRATZ.

PHILADELPHIA, *May* 28, 1834.

NER MIDDLESWARTH, esq., *now at Harrisburg, Pa.*

By this day's mail I forward to Mr. James Lesly, cashier of Branch Bank of Pennsylvania, at Harrisburg, my deed to you and Jacob Feese, executors for moiety of James Ferguson tract of land, together with bond of indemnity, to be delivered on payment of purchase money. You will, as agreed to, pay the costs of suit, and send me a paper to be signed by the surviving executrix of Joseph Simon, deceased, to withdraw the existing suit. If it is convenient to pay the consideration money at once, it would be agreeable to me. Presuming you are at Harrisburg, I direct this letter to that place. It would be pleasant to me to dispose of other lands could purchasers be found.

Yours,
SIMON GRATZ.

PHILADELPHIA, *June* 2, 1834.

NER MIDDLESWARTH, esq.,
Beavertown, Union county.

On the 28th ult. I wrote to you, directed to Harrisburg, and by same mail forwarded to J. Lesley, the deed for James Ferguson land, together with bond of indemnity against the Cohens, &c. Be pleased to have the costs paid on suit, and have such a paper sent to me for Mrs. Phillips, surviving executrix of Joseph Simon, deceased, to sign, as will withdraw the suit. It would be very agreeable to me to make sale of some or all of my land in your county at fair prices, or at some reduction, provided a portion, one-half, would be paid on account. What price do you believe could be procured by the Ezekiel Levy tract? It is patented. I own three plantations on Aughwick, fine land; badly tenanted and negligent agent. This land is about 4 or 5 miles from Shirleysburg. Mr. Harvey, of that place, has had charge of them, and if you would consent to take charge of them, he will communicate to you all needful information, should you go to see them; distance from Lewistown 20 miles, via Bell's Mills on Juniata, below mouth of Aughwick. Yours,

SIMON GRATZ.

PHILADELPHIA, *June* 25, 1834.

NER MIDDLESWARH, esq.,
Beavertown, Union county.

I received a letter from Mr. Lesley, who informs me that you placed in his hands Mr. Feese's and your note for payment, due in July, 1835. And I have requested him to transmit to you the deed, for the land James Ferguson, and herewith I send you Mrs. Phillips' directions to discontinue suit for the same. You shall have the draft, &c., for Aughwick lands in a few days. Yours,

SIMON GRATZ.

PHILADELPHIA, *August* 21, 1834.

NER MIDDLESWARTH, esq.,
Beavertown, Union county.

I acknowledge the receipt of your favors of the 11th and 16th insts. and note contents. Your last states sale of the Philip Palmer tract of 200 acres to Henry Glass and Adam Kalletzer for thirteen hundred dollars; $800 payable on 1st April next, balance in instalments of $100 per annum, they to take the patent and satisfy the commonwealth themselves. Instalments to be secured by mortgages. On first payment, they are to receive a good and sufficient title and warrantee against all claims which may be set up by the Cohen family; this warrantee may be done by indemnity as in the case of Feese. The title to this land is indisputably in me. It appears that Jesse Anderson, on 4th June, 1834, patented this tract, under a right which I presume proved defective. If he did so patent the land, it is my opinion this will inure to

the purchasers. You will enter into the contract on the terms named. I hope you will be enabled to make further sales, and in doing so it would be acceptable to me to receive a cash payment, if entirely convenient. I hope you will have it in your power soon to rent the Aughwick lands. My son Simon, who is now there, will require a change of his tenants, and I hope you will be enabled to get a good farmer, with a decent family, with whom he may live. He is unacquainted with a country life, and you will add much to my obligations to you by your instructing him with your advice and assistance in the management of his farm. Any money you may wish to remit to me, may be placed with Mr. Lesley, at Harrisburg.

Yours, SIMON GRATZ.

PHILADELPHIA, *September* 24, 1834.

NER MIDDLESWARTH, esq.,
Beavertown, Union county.

I am in receipt of your letter of the 17th instant. I am content with the re-sale of the Philip Palmer tract of land. I do not know what claim the State has for patenting this land. If the former owner patented it, and paid for the patenting, the State has no claim upon the land; but if the former claimant gave mortgage, then it is our best way to take no notice of such patent, and go on and patent anew as if none had yet issued, as of right we are entitled to do, if it is our interest to adopt this plan. I shall be pleased to have propositions for the Chapman township lands, and any others. The checks you sent me are to your credit. Yours,

SIMON GRATZ.

PHILADELPHIA, *October* 8, 1834.

NER MIDDLESWARTH, esq.,
Beavertown, Union county, Pa.

I have your letter of 30th ult. Annexed you have drafts of lands in your neighborhood. I think the James Hunt tract is not patented. I would allow one hundred dollars to the purchaser to do it himself, to be deducted from the two last payments; at least this course would be preferred by me. I hope you will be enabled to sell it at the price you name. I have not seen Mr. Breck; I shall write him this day and get his reply. The tract is patented. Before the improvements were made it sold for about $2,300. Yours,

SIMON GRATZ.

PHILADELPHIA, *December* 8, 1834.

NER MIDDLESWARTH, esq.,
Beavertown, Union county.

On my return home from Lancaster, I received your favor of the 1st, for which you have my thanks. I note your remarks about title in the name of Guier. It is not probable that the title we hold can be affected by any other. The possession of these lands has been in the Cohens since the year 1795. I never heard of any other survey

on them before this intimation. It is well that you have relet them. Have you done any thing with the tract in the name of Ezekiel Levy? My son Simon supposes the tract on which Richardson lives contains 150 acres; in this he is mistaken, it contains about 300 acres. A part is, however, held by adverse possession. It was surveyed in 1762, under special order, and no money paid. The David Frank tract is also part in adverse possession. When he fully understands these tracts, I shall be willing to treat with him for the sale of these lands, and for which he ought to buy for cash. If he can, my expectation is to see him this winter; perhaps we may meet at Harrisburg, where you will be. At any time you may have funds for me, be pleased to deposit at the Branch Bank of Pennsylvania, at Harrisburg. The agreement for Union county lands you can hand me when we meet, and I shall be ready to execute deeds to purchasers. I hope you will enjoy health during the session, and be enabled to do much good. You will oblige me by transmitting the reports and documents of the several heads of departments, canal commissioners. I have just received your letter containing copy articles of agreement with Goss and Ritter; also yours of 6th; I will attend to having the deeds executed and delivered to you in January next, when I expect the pleasure of seeing you at Harrisburg. Yours,

SIMON GRATZ.

PHILADELPHIA, *December* 15, 1834.

NER MIDDLESWARTH, esq., *Harrisburg, Pa.*

I wrote you some days since, to which I refer. The nine months allowed Hinds to pay and complete his title to the tract of land purchased by John Weeks will expire on or about the 9th January next. I think the power of attorney sent on to you and Mr. Potter gives ample authority to demand payment and to deliver deed. Will you be pleased to have this attended to, or on failure to take possession of the land. I have authorized my son Simon to act as agent for the Aughwick lands. The Richardson's tract I have agreed to sell him.

Yours, SIMON GRATZ.

PHILADELPHIA, *January* 13, 1835.

NER MIDDLESWARTH, esq., *Harrisburg, Pa.*

I thank you for your favor of 7th instant, and for your promptness in attending to the business with Mr. Hinds. I did suppose that I should have the pleasure of seeing you about this time. I am detained, however, to complete a partition of property, held by another and myself. I hope and expect to see you early in next month; but should the business you allude to be of importance, I shall be pleased to hear from you its character, when you can find leisure to write me.

Yours, SIMON GRATZ.

HARRISBURG, *February* 12, 1835.

NER MIDDLESWARTH, esq.

I now hand you my deed to H. Goss and H. Ritter, jr., for tract of

land in name of Philip Palmer, which you sold them for $1300. Cost of deed, $3.

The purchasers to patent the same, if cost is not above $200.

$800	on the 1st April, 1835,
100	on the 1st April, 1836,
100	on the 1st April, 1837,
100	on the 1st April, 1838,
100	on the 1st April, 1839,
100	on the 1st April, 1840,

To be secured by mortgage and bond on the premises.

Cost of patenting, interest calculated to 1st April next, will be $222 45; excess $22 45, to be deducted from the first payment of $803. You have also herewith indemnity against claims of Cohen family; P. Palmer's deed *poll* to Sol. Etting; Sol. Etting's deed to Joseph Simon, office copy; drafts and calculation. Also, my deed to John Weider, for moiety of tract, name of Henry Airs, patent to John T. Mifflin; office draft, consideration, $1100; cost of deed, $3.

To be secured by mortgage and bonds or notes on the premises.

On the 15th April, 1835,	$550
1st April, 1836,	50
1st April, 1837,	100
1st April, 1838,	100
1st April, 1839,	100
1st April, 1840,	100
1st April, 1841,	100

Also, my bond of indemnity against the claims of Cohen family. On receiving payment, be pleased to deposite the amount at the Northumberland bank, to account of James Lesley, esq., cashier of office Bank of Pennsylvania, at Harrisburg, for my note, and forward certificate of deposite to me at Philadelphia. Mr. Fees' and your note I have deposited at the office at Harrisburg for collection.

Yours, SIMON GRATZ.

PHILADELPHIA, *May* 29, 1835.

NER MIDDLESWARTH, esq.,

Beavertown, Union county.

I am favored with your letter of 24th instant, informing of deposite made to my account at office of discount and deposite, Bank of Pennsylvania, at Harrisburg, and of which I was informed by Mr. Lesley. At the last session a law passed grading the interest chargeable on patenting lands, which will reduce cost of patenting the P. Palmer tract below the sum of $200. A man named Mashua, who has resided in Beavertown, and who says you are acquainted with him, called on me and proposed purchasing the Laurence and Wilks tracts of land. I referred him to you. I suppose these tracts to be worth between $5 and $7 per acre; they are patented. I believe lands will advance in price in this year, owing to the great extension of internal improvements, and the general prosperity of commerce, which can only be affected by the political degradation of the Government. This I hope will not long

continue. I feel inclined to dispose of all my distant lands, and shall not refuse a reasonable offer for any in your vicinity.

Yours, SIMON GRATZ.

PHILADELPHIA, *October* 26, 1835.

NER MIDDLESWARTH, esq.,
Beavertown, Union county.

Since my last to you, I am in receipt of your favors of the 17th and 20th instant. I approve and confirm the sales you have made of a part of the William Cox tract of land, and hope you will be enabled to effect other sales. My last advised you that there was no probability at present of making the canal in east side of the river, if we were permitted to go across. Of course we shall decline purchasing of Mr. Gale.

Yours, SIMON GRATZ.

PHILADELPHIA, *March* 25, 1836.

NER MIDDLESWARTH, esq., *Harrisburg, Pa.*

Annexed you have power of attorney to sell, &c., the three tracts of land near Catawissa, in Columbia county. These lands are patented. The tenants are notified to give up possession on 1st April. George A. Frick, esq., at Danville, writes me as below; I wish you to address him, saying that the tenants on the land must move off, and that on your getting to Danville you will either sell or lease the land, subject to delivery of possession when required. A man, named Wolliver, one of the tenants, must move off; the other may remain until you get up. I am not so far recovered as to be able to leave home. I hope you have got the Wisconisco coal bill through. Please let me hear from you. In selling these lands, I wish you get as much in hand as you possibly can. Yours, SIMON GRATZ.

PHILADELPHIA, *May* 4, 1836.

NER MIDDLESWARTH, esq.,
Beavertown, Union county.

I received your letter by Mr. Baker, with two hundred and sixty dollars, for which I gave him receipt. I do not recollect the name of warrantee of tract you have contracted to sell, on which Shelling lived, but am confident you have done the best for my interest, and therefore confirm the sale. The amount of compensation for services you will fix yourself. I shall have the pleasure of seeing you at Harrisburg at the opening of the extra session, please God.

Yours, SIMON GRATZ.

Have you been at Catawissa, and what think you of the land?

PHILADELPHIA, *August* 1, 1836.

NER MIDDLESWARTH, esq.,
Beavertown, Union county.

I hope you have enjoyed good health since your return home. I have an application for the lands in tenure of Dicker and Lanthese, I

suppose to be the Laurence and Wilks survey. I have written to the applicant that I held these tracts at $5½ per acre, cash; is this a proper price for them? I prefer selling at something less for prompt payment, than on time. Have you been at Catawissa? I think the lands I own there ought now to sell well, as they have the expectation of railroad. Be pleased to collect the balance due on sales made. I shall want money at Harrieburg this month. The lands unsold on Black Oak ridge I shall be pleased to close sales of this summer. Please let me hear from you.

Yours,

SIMON GRATZ.

PHILADELPHIA, *August* 24, 1836.

NER MIDDLESWARTH, esq.,
Beavertown, Union county.

I have sold to Mr. James Robb the two tracts of land, name of James Wilks and Daniel Laurence, in Mifflin county; he is entitled to the rents from day of sale and the possession of the land. He has deed for the land.

Yours,

SIMON GRATZ.

PHILADELPHIA, *November* 21, 1836.

NER MIDDLESWARTH, esq.,
Beavertown, Union county.

I have your favor of the 12th instant. I confirm the sale you have made of the tract on which George Kemp lived, and the woodlands, and shall have the deeds drawn as soon as you furnish me with the description of each lot. I again thank you for your attention to this.

Yours, SIMON GRATZ.

PHILADELPHIA, *December* 12, 1836.

NER MIDDLESWARTH, esq.,
Beavertown, Union county.

I have your favor of the fourth instant, and note its contents. It would be well for you to write deeds for the lands sold, and they can be signed by me at Harrisburg, if I can get them; if not, they may be sent to me; let them be left with Mr. Lesley; description below. If you can get $3 50 for the tract of land in name of Shaffers, sell it. Daniel Frantz offers $500 for the tract he has, or 306 acres, name of Ezekiel Levy, $100 to hand. I do not like the offer or the man. Perhaps you could sell this place; it is better land and better treed than Shaffer's place. Shall I ask the favor of you in attending to this?

Yours, SIMON GRATZ.

PHILADELPHIA, *January* 10, 1837.

NER MIDDLESWARTH, esq.,
Beavertown, Union county.

The lands, name James Hunt and Charles Dungan, amongst others, was conveyed by Martin Withington, esq., sheriff of Northumberland

county, to Joseph Simon, by deed dated 24th August, 1790, recorded in Northumberland county, book F, page 24, and by Leah Phillips, surviving executrix of Joseph Simon, deceased, conveyed to Simon Gratz, by several deeds, bearing date, one of them, of the 3d April, 1833, and the other bearing date the 24th April, 1833, recorded, &c. The warrants conveyed to William Trent, who mortgaged the same to David Franks and Joseph Lawson, as whose property it was sold in 1790, and Joseph Simon became purchaser as above. I received your letter this morning, and shall be pleased to hear of deposite with Mr. Lesley as early as practicable; money never before so scarce in this city, and in extreme demand. You may therefore judge how much I shall be obliged by collecting for me all you can.

Yours, SIMON GRATZ.

PHILADELPHIA, *January* 23, 1837.

NER MIDDLESWARTH, esq., *Beavertown, Union county.*

The amount of expenses attending the suits, Hinds, and your compensation on the amount directed, as stated by yours of the 16th inst., together with your commissions on sums received, you will retain in your hands from the spring payments. When you will have the deeds drawn, send them to Mr. Lesley, at Harrisburg, with directions, if I am not there, to forward them to me by private conveyance. A moiety of the three tracts in Chapman township belongs to me, and the other moiety I hold in trust for some of my brothers, and which I intend to convey to them. In proposing any sale, let it be understood that the consent of the parties interested is to be had. Can you sell the tract in the name of Ezekial Levy? This is solely mine.

Yours, SIMON GRATZ.

PHILADELPHIA, *April* 20, 1837.

NER MIDDLESWARTH, esq., *Beavertown, Union county.*

I hope you have ere this remitted to Mr. Lesley the amount of purchase money and instalments due on lands sold. The pressure for money is extreme here, and from the innumerable disappointments which I have had, makes it very important that every exertion be moved in the collections. If any of the purchasers have the means of cashing their instalments due in 1838, you may allow such a discount of ten per cent. Before sending power of attorney, the Greensburg business, I want to hear from you. I have no doubt of your attention to my concerns, and the reason of my writing to you thus urgently arises from the great want of money we experience in the city.

Yours, SIMON GRATZ.

I should be pleased to hear from you by return mail.

PHILADELPHIA, *May* 1, 1837.

NER MIDDLESWARTH, esq., *Beavertown, Union county.*

Your favors of the ult., conveying certificate of deposit at Northumberland Bank for , came duly to hand. In the At-

lantic cities, we are reaping fully the effects from the Government interference with the currency. Already losses and failures have taken place, in amount more than two or three times the amount of all the gold and silver in the United States. All our banks are so extended, that they are unable to afford any relief, and are alarmed for their own safety. In many instances houses worth three times the amount of their responsibilities have been forced to suspend payments; and the general belief is, that as yet we have not reached the worst. You will infinitely oblige me by collecting for me all the money you can from instalments due; or if practicable, to dispose of any of the bonds at a discount of 8 or 10 per cent.; I would willingly submit to the loss. You will not suppose for a moment that I think it needful to urge you, but under present circumstances it may be that you might effect my object, having the privilege of thus paying for it. Please let me hear from you.

Yours, SIMON GRATZ.

PHILADELPHIA, *April* 9, 1839.

NER MIDDLESWARTH, esq., *Beavertown, Union county.*

Your favor of the 23d January, advising of your having deposited two hundred dollars with Mr. Lesley, came to hand in due course. I have been confined to my house by indisposition all the winter; I am now, thank God, getting better. You will be pleased to collect all moneys now outstanding on account sales made. And I will be greatly obliged to you to furnish me with a general account of all sales made by you under the two deeds from Mrs. Phillips, showing the tracts, quantity, prices, to whom sold, what payments have been received, and balances due, as early as practicable. I think there is one of Mrs. Phillips' deeds in your hands; if so, please forward it to me. Mr. Blanchard claims a fee for suit at Lewistown. I had thought that Mr. Potter had received compensation for himself and Mr. B.; how is this? as I wish to settle these accounts. Have you collected from Frantz the $200? Any thing from Chapman's lands? I presume you have not been in Clearfield county. At your convenience be pleased to do as above requested.

Yours, SIMON GRATZ.

PHILADELPHIA, *April* 17, 1839.

NER MIDDLESWARTH, esq., *Beavertown, Union county.*

I have yours of the 15th inst., advising your deposite of $190. I wrote to you last week, requesting you to make out a general account of sales of land comprised in Mrs. Phillips' deed, showing the sales of each tract, price, quantity, and credits, and amount received on these sales. Messrs. Cohens are disposed to give me all the trouble they can, and have instituted a suit in chancery. I must answer this bill, and require the above to do it effectually. I beg you to exert yourself in collecting all the outstanding debts for lands as early as practicable.

Yours, SIMON GRATZ.

BEAVERTOWN, U. C., *June 26th*, 1833.

SIMON GRATZ, esq., *Philadelphia*.

I have just seen an advertisement, put up by the sheriff of this county, for the sale of the tracts of land which was once sold by Mr. Phillips to Daniel Maser—(you will recollect the tract we were on where the old saw mill stands)—it is to be sold as the property of Maser. Had I not better attend on the day of sale, (the 9th of July,) and put up a caution to purchasers, stating the title to be in you, and not in Daniel Maser?

Please give me instructions.

Yours, respectfully,
NER MIDDLESWARTH.

LEWISTOWN, *April* 9, 1834.

SIMON GRATZ, esq., *Philadelphia*.

The trial for the land John Wicks bought of the executors of Joseph Simon has this moment been decided; the verdict of the jury is $3,518 93, with a stay of execution for nine months. I presume they will take it up to the supreme court; but, if they do, I think it will avail them nothing; we are perfectly prepared for them at every point, and made our case out fully, as was stated in Judge Burnside's charge to the jury. Mr. Potter has done his duty faithfully, and with much talent and ingenuity. Hinds cannot pay the money, I am sure, and after the cause takes its due course through the law, I expect you will have the land, and nothing more.

Your friend and humble servant,
NER MIDDLESWARTH.

NEW BERLIN, U. C., *May* 20, 1834.

SIMON GRATZ, esq., *Philadelphia*.

I should have wrote you before this time, but could not get time to come to this place sooner. By the record, it appears the deed from Leah Phillips, executrix, &c., to Simon Gratz (including the James Ferguson tracts) is dated the twenty-fourth day of April, A. D. 1833, and recorded in Book H for recording deeds, page 161 and 162. You will please have the deed made to Ner Middleswarth and Jacob Feese, executors of Jacob Feese, late of Beaver township, Union county, deceased, in trust for the heirs of said deceased. If it suits you to send the deed and indemnified bond, to Mr. Lesley, before the two months are expired, we will be able to lift them, and pay the $350. When the deed is ready please dropt us a few lines.

Very respectfully, your obedient servants,
NER MIDDLDSWARTH,
JACOB FEESE.

BEAVERTOWN, *August* 11, 1834.

SIMON GRATZ, esq., *Philadelphia*.

Your favor of the 2d inst. was received. I have not been to Augh-

wick yet; have been too busy in getting in my harvest and hay, &c., but intend going next week; I had made out several good German farmers in my neighborhood that were to go on lands next spring, if I could not sell them; but as two of the best tracts are otherwise disposed of, there will be no necessity of getting them to go, unless your son Simon wants them; they are decent families and good farmers. As soon as I return, I will inform you the situation the lands are in; I expect to sell one or two of the tracts in this township, in a few days, and when the bargains are concluded, will send you an account of the sale or sales for your approbation or rejection. I received $20 a few days ago for rent; shall I send it on to you by mail? Your lands near me are improving fast; the fences are generally in pretty good order, &c.; the new barn on the Philip Palmer or "Anderson's tract," is nearly complete, and filled with grain and hay.

Your friend and humble servant,

NER MIDDLESWARTH.

BEAVERTOWN, *August* 16, 1834.

SIMON GRATZ, esq., *Philadelphia.*

On yesterday I made sale of the "Phillip Palmer" tract of land, 200 acres, to Henry Goss and Adam Kalbetzer, for $1,300, payable as follows: $800 on the first of April next, (at which time a good and lawful deed is to [be] given them, containing a warrantee,) and the balance, being $500, in instalments of $100 each, payable annually, on the first of April, without interest, and they to take out the patent and satisfy the commonwealth themselves. The minimum price we agreed on at the Bear Gap coal mines, for that tract, was $5 50. You will please inform me whether the sale meets your approbation or not. If you approve of the sale and terms, I will close the contract immediately; and if not, it, of course, will fall through. It is the best price and terms I can obtain, and I consider the sale a good one, being one dollar more per acre than was expected could be gotten. The instalments are to be secured by mortgage or otherwise, as you may direct. The purchasers say, that "Andersons, with whom the suit was had, and the land recovered from, obtained a patent for it, and gave a mortgage in the land office for the purchase money; and they are fearful they would have to pay the patent on your title, and also the mortgage given by A. I, however, told them differently. You will be pleased to give them your views on the subject, in your answer to me.

Yours, with respect, NER MIDDLESWARTH.

BEAVERTOWN, *September* 17, 1834.

SIMON GRATZ, esq., *Philadelphia.*

I have just now returned from our court, where I attended to put up a caution for persons not to buy at sheriff's sale the Daniel Maser tract of land, which belongs to you and Mr. Breck. The sheriff had not

struck it off when I left town, but was crying it out at $100, which some person had bid for it. They attempt to sell it as the property of Daniel Maser, deceased. I have been to see the Aughwick lands, and find them of a tolerable good quality, but in bad order. I called on Mr. Harvey, your late agent, and he went with your son and myself over all the tracts; but he is quite intemperate, and we could get but little satisfaction from him respecting the manner he had conducted them. I could find no person to purchase any of the land, but find a part of the David Frank tract is claimed by, and in possession of, a person who has never leased, or come under your agent, Harvey. It is about forty acres of the tract he claims, and a part thereof of the very best land on it. Wm. Chilcoate has the remainder rented until next April. The upper tract, taken up in the name of Jeremiah Warder, is under lease to Alexander Richardson, whose term will expire in two years from next spring, but sooner if the land is sold. The lease to Richardson is not a good one, and I got him to agree to make some further improvements—such as clearing out two fields, making rail fence, &c. The contract I made for the sale of the Phillip Palmer tract of land, and which was sanctioned by your letter, has not been entered into in consequence of Kolbetzer giving up; but I now have agreed with Henry Goss and Henry Ritter for the sale of it on the same terms, except this difference, if it cost more than two hundred dollars to satisfy the commonwealth for the purchase money and interest, whatever the balance might be, is to be deducted out of the $1,300 they are to give Would thank you to inform me immediately whether you are satisfied with the contract, which I expect you will be, as it still is a very good sale, the land being not good. I have a prospect of selling a part of one of the tracts in Chapman township, and shall be guided by the instructions you gave me in one of your letters, and if an agreement is made, will send you the particulars for your approval or disapproval. Enclosed I send you two drafts of $10 each, which I cashed for your son Simon, as he said he wanted some cash badly.

Your friend and humble servant,

NER MIDDLESWARTH.

BEAVERTOWN, *September* 30, 1834.

SIMON GRATZ, esq., *Philadelphia.*

Yours of the 24th inst. was received, in which you give your assent to the sale of the Phillip Palmer tract. Yesterday I was upon and contracted for the sale of the "James Hunt" tract, 195 acres. The contract is not altogether complete, as I do not know whether the land is patented or not. This is one of the poorest and roughest tracts you own in Beaver township, and the building thereon is not worth any thing. I asked them $5 per acre, and they offered about $4 25, which I would not be willing to give; but I will get as much per acre as I can. It will be between four and five dollars—the one-half down on the 1st day of April next, and the balance in instalments, without interest, secured by mortgage, &c. I do not consider the tract worth more than $3 per acre.

I think I can get $2,000 for the Maser tract, taken up in the name of "Thomas Freek," of which Mr. Breck owns the one-half. Mr. B. directed me to take $800 for his half, if I could get no more. Will you be good enough to consult with Mr. B., and then inform me whether I shall take the $2,000, if I can get it—the payments in the usual way of selling in this country, to wit, one-half in hand, and the other half in instalments, without interest, until due. We can sell on no better terms here, without taking less than the value of the lands. I shall go to Chapman township in a few weeks, and I hear of two men there that *wants* to buy parts of tracts, of which I will inform you when I see them.

Please write me immediately whether the "James Hunt" tract is patented. I think it would be well to give me a general list of all the lands over which I am agent, and stating whether they are patented or not, as it would enable me better to know what to ask for them.

Very respectfully, your humble servant,

NER MIDDLESWARTH.

BEAVERTOWN, *October* 25, 1834.

Messrs. SIMON GRATZ and SAMUEL BRECK, *Philadelphia*.

This day a man, by the name of John Weider, from Lehigh county, came into our neighborhood, in search of land to purchase. I, not having had the opportunity of consulting you about the price I might take for the "Maser tract," concluded a contract with Mr. Weider for it on the following terms: he pays twenty-two hundred dollars in all—eleven hundred on the fifteenth day of April next, and the other eleven hundred in instalments of two hundred dollars each, on the first day of April of each year, (without interest,) until all is paid, (the first instalment, however, to be $100;) the whole to be secured by mortgage. A good and sufficient deed to be given him at the time he pays the first payment, and gives his note and mortgage; the deed to contain a warrantee against any claim from the Cohen family.

I hope you will be well satisfied with the sale, as it is a good one, and more than I could get from any other person, having had but two other offers since I had it in care—one for $1,800, and the other for $2,000, but not so sure a man, and the instalments not so high. Mr. Breck wrote me some time back that I should take $800 for his share, if nothing more could be obtained. The sale would be six hundred dollars more for the whole tract. I thought best to close this contract without your consent, as the man would not wait until I heard from you; but if you are not satisfied with what I have done, please let me know immediately, and I will write to him and give up the bargain.

Yours, respectfully, NER MIDDLESWARTH.

Mr. Gratz will please let Mr. Breck know the contents of this letter immediately.

Mr. Gratz: I have concluded the bargain for the "Phillip Palmer" tract on the terms you agreed to, and expect to agree for the "James

Hunt" tract soon. I shall go to Augwick next week with the two men who wish to purchase land, and shall let you hear the result soon after.

N. M.

HARRISBURG, *December* 1, 1834.

SIMON GRATZ, esq., *Philadelphia*.

Just before I left home I went to Chapman township, either to sell or relet your lands there, but was unable to effect a sale of any of it. I would have sold 200 acres to the "Huckmusters," had not a man by the name of McCoy come into the neighborhood a few weeks ago, and run around the greatest part of the tract of land they live on, under an old title (about sixty years old, it is said,) under the name of Guier; but whether he intends to prosecute his claim any further I cannot tell; it however prevented the sale for the present. I relet the whole for one year, from the 1st of April next, for improvements, as the lands are in a bad state. Some few days ago I received a letter from your son Simon, (after some previous correspondence,) offering me, for the tract of land on which Richardson lives *on*, in Huntingdon county, eight dollars per acre, which I am willing to take, provided it meets your approbation. It will be necessary to make the sale soon, if we wish to give the present tenant notice to remove from the premises next spring, which is the intention of your son, if he buys. I shall be glad to hear from you on the subject soon; your son also wishes to purchase the "David Frank's tract," but we have not yet come on a proper price. I have $40 in cash for you, which I received for rent; will you be pleased to instruct me whether I shall pay it into the bank here, or send it on to you? I shall send you, in a few days, copies of the agreements made for the sales of lands in Union county, by which you will see that the deeds are to be delivered on the 1st of April next, when the first payments are to be made, and notes and mortgages given for the instalments.

Very respectfully, yours, &c.

NER MIDDLESWARTH.

N. B. Direct to this place.

Article of agreement, made this 2d day of October, 1834, between Simon Gratz, of the city of Philadelphia, by his attorney in fact, Ner Middleswarth, of Union county, in the State of Pennsylvania, of the one part, and Henry Goss and Henry Ritter, junior, of the township of Beaver aforesaid, of the other part, witnesseth: That the said Simon Gratz, by his said attorney, doth hereby agree to grant, bargain, and sell, unto the said Henry Goss and Henry Ritter, all that certain tract or parcel of land, situate in Beaver township aforesaid, adjoining lands of Henry Mick, Jacob Harleston, and others, containing two hundred and four acres and allowance, (be the same more or less,) it being the same whereon the said Goss now resides, and was originally taken up in the name of "Philip Palmer," on the following terms, to wit, the said Simon Gratz shall make and deliver unto the said Goss and Ritter,

their heirs or assigns, on the first day of April next, a good and lawful deed for said land, containing a warrantee against any claims the Cohen family of Philadelphia, or any person claiming under them, may set up against said land and shall give peaceable [possession] to the said Goss and Ritter at the same time. And the said Goss and Ritter are to pay unto the said Simon Gratz, for and in consideration for said land, the sum of thirteen hundred dollars, to be paid in the following manner, to wit, eight hundred dollars on the said first day of April next, at the time and before the delivery of the deed as aforesaid, and the balance of five hundred dollars in instalments of one hundred dollars each, the first payable on the first day of April, 1836, and one hundred dollars yearly on the first day of April, until the whole is paid, (the instalments without interest until due,) and the whole to be secured by mortgage. The said Goss and Ritter are, in addition to the consideration money aforesaid, to satisfy the commonwealth for the money she has yet to claim for said land, provided the amount does not exceed $200; but if it exceeds that sum, then said Simon Gratz is to allow said Goss and Ritter out of the first payment. The said Goss and Ritter are also to pay for all necessary writings to make their title as herein stated. It is also agreed that the said Goss and Ritter may give their bonds or notes and mortgage for the instalments separately if they choose. The grain in the ground is reserved on the part of Mr. Gratz. In witness, &c.

SIMON GRATZ, esq., *Philadelphia.*

The above is a copy of the agreement I entered into for the sale of Philip Palmer tract. You will please make out the deed and send it to me before the legislature adjourns, to enable me to carry the contract into effect. I have sent a copy of the agreement between yourself and Mr. Breck, on one side, and John Weider, of Lehigh, for the Maser tract, and requested Mr. B. to show it to you. You will also see the necessity of having the deed ready, that I can take it home when the legislature adjourns.

Yours, respectfully,
NER MIDDLESWARTH.

HARRISBURG, *December* 6, 1834.

SIMON GRATZ, esq., *Philadelphia.*

Mr. Jesper Harding, of your city, was with me to-day and says a friend of his wishes to purchase a farm. I offered him one of yours. I think the one George Knep now lives on, and once purchased from Mr. Phillips, would suit him. He said he would call on you in a few days about it. If you make any arrangement about it, I will be at home at the holy-days and could then sell it to him under your directions.

Yours, respectfully,
NER MIDDLESWARTH.

HARRISBURG, *December* 16, 1834.

SIMON GRATZ, esq., *Philadelphia.*

Yours of yesterday was this moment received. Hinds has told me

he would give up peaceable possession of the land when the time expires. He is not able to pay the judgment. I wrote to Mr. Potter on yesterday to instruct me about taking possession. Hinds wishes no further cost made on it. I shall be guided, however, entirely by the direction of Mr. Potter on that point. I shall be glad to see you at this place some time this winter.

Yours, with respect,
NER MIDDLESWARTH.

HARRISBURG, *January* 7, 1835.

SIMON GRATZ, esq., *Philadelphia*.

When at home, during the recess of the legislature, I obtained possession from Stephen Hinds of the tract of land taken up in the name of William Cox. Mr. Hinds gave up the possession without necessity of issuing a fi. fa. and getting the sheriff to deliver the possession. I also took from each tenant on the premises an instrument of writing acknowledging themselves to be in possession under you, and to deliver up the same at any time required. Will you please to inform me whether or not I shall have the pleasure of seeing you at this place soon; if not, I must write you more fully on a number of things.

Yours, respectfully,
NER MIDDLESWARTH.

HARRISBURG, *January* 15, 1835.

SIMON GRATZ, esq., *Philadelphia*.

Your favor of the 13th inst. was received. The business I alluded to in a former letter is altogether relating to your lands under my care. And with the expectation of having the pleasure of a personal interview with you at this place before the end of next month, or before the legislature adjourns, I shall defer going into the matter in a written communication, as I can much better explain my views verbally than in any other way. I have taken care to get all the tenants (on the land recovered from Hinds) to take possession under me as your agent, and in your name, and I think we should now proceed to get the costs paid; I now await your directions in that case. There is another matter about which I am often a good deal pestered, that is, there are several individuals in my neighborhood who were subpœnaed as a witnesses in the ejectment brought by Levi Phillips, &c., against Jesse Anderson. These witnesses were summoned (as I understand) by Mr. Cohen, as Mr. Phillips' agent, and they should be paid in some way. Anderson is gone to the western country, and I believe is worth nothing. I would thank you to instruct me in this matter. It will not be necessary at this time to remind you of the necessity of having the title papers properly executed, and ready at the proper time for the two tracts of land I sold.

Very respectfully, your obedient servant,
NER MIDDLESWARTH.

HARRISBURG, *May* , 1835.

SIMON GRATZ, esq., *Philadelphia.*

I have at length obtained the first payment for the land I sold to John Weider, (the Maser tract,) and to Goss and Ritter, (the Philip Palmer tract,) and have this day deposited $1,553 25 in the branch bank at Harrisburg, according to directions, except $50, which Weider could not raise this spring, $25 of which are yours. I have taken his note for the same, on interest. The amount is as follows:

Cash received of J. Weider - - - - -	$525 00
Deed - - - - - - - -	3 00
Cash from Goss and Ritter - - - - -	800 00
Deed - - - - - - - -	3 00
Feese's note - - - - - -	350 00
	$1,681 00
Deduct - - - - - - - -	129 00
	$1,552 00
Interest on Feese's note - - - - -	1 25
	$1,553 25

Deductions.

Paid in part to Goss, for building new barn on P. Palmer tract,	$40 00
Paid amount due commonwealth above $200 00 -	22 45
Per centage for selling, collecting, &c., at 5 per cent. for $1,331 00 - - - - - -	66 55
	$129 00

I have taken mortgages, &c., for the payment, according to contract, and have had them recorded. I hope the whole matter will be satisfactory to you. Please drop me a line when you receive this.

Very respectfully, your obedient servant,

NER MIDDLESWARTH.

BEAVERTOWN, *May* 11, 1835.

SIMON GRATZ, esq., *Philadelphia.*

Your letter of the 6th inst. was received on yesterday; I should have remitted you money before now could I have obtained it. The men who purchased have difficulty in making up the first payment. I have received your money, all but $50, from John Weider, (for the Maser tract,) which he says he cannot pay until the next spring. I have, therefore, taken his note, on interest, for that amount, and the other part of the contract is complied with on both sides. Goss and Ritter have not yet been able to make their first payment, but will be

ready in a few days. Feese will also be ready to pay off his note in about a week; and as soon as I get the money, I will deposit it in the bank at Harrisburg immediately. I will attend to the letter of Joseph Frontz as soon as possible.

Yours, respectfully,
NER MIDDLESWARTH.

BEAVERTOWN, U. C., *Oct.* 17*th*, 1835.

SIMON GRATZ, esq., *Philadelphia.*

This week I have sold the greatest part of the William Cox tract, (recovered from Hinds.*) I divided it into seven or eight pieces, so as suit the purchasers, and in that way have effected a much better sale than I otherwise could have done. The highest price per acre is $8 75, and the lowest $6 00; it would not have sold for more than $5 00 per acre, the whole together, or cut into two pieces. The terms are as usual—the half down on the first of April next, and the other half in three equal instalments, without interest; to be secured by bonds and mortgages. I have reserved the privilege of giving up the contract, if they do not meet your approbation. Please therefore to inform me, by next mail, if the sales meet your approbation, as I must get a surveyor and have the lots divided as soon as possible. I congratulate you on the result of the election. I believe we have made clear work with our enemies.

Yours, truly,
NER MIDDLESWARTH.

BEAVERTOWN, *April* 15, 1836.

SIMON GRATZ, esq., *Philadelphia.*

I have, as yet, not been able to get all the money for you I expected; the purchasers of the tract I cut up into pieces are most of them not ready to comply with making their first payment, according to their contract; but I think nearly all of them will be ready in three or four weeks. I have received the whole of the money for the piece sold to Adam Baker, $84 87. He wishes you to deduct some interest for his instalments; please direct me about it. I also received from Isaac Gerhart $115 00, only part of his first payment; the other part he will pay in a short time, being $31 81. Also David Fessler's first payment, being $59 64. Making in all that I have yet received, $259 51. I send you by the bearer hereof $260 00, for which you will please send me a receipt; and as soon as I get any other money for you I will have it placed to your credit in the Pennsylvania bank at Harrisburg, or at North'd, as you direct me. Please write me how much I shall retain for my expenses and trouble in preparing and attending to the suit with Hinds, at Lewistown. I have agreed to sell the tract on which Shelling lived so long; it is the poorest tract you have in this township. I

* About 75 or 80 acres yet to sell.

offered it for $5 00 all along, and I am now to get $6 00; but the amount claimed by the commonwealth to be deducted out of that sum. I suppose, as the law now stands, it will be about fifty-five or sixty dollars; so that I would get about $5 75 clear. The purchasers are George Kaley, John Baker, and Jacob Speglemeyer. The hand-money to be paid on the 1st April next, and the instalments to be secured by mortgages, in the usual way. Please tell me if you sanction the contract. I will attend to paying the taxes mentioned in your last.

Yours, respectfully,
NER MIDDLESWARTH.

BEAVERTOWN, *August* 6, 1836.

SIMON GRATZ, esq., *Philadelphia.*

I have been to see your land near Catawissa, in Columbia county, and found it in a bad condition. I leased it to a man for two years, for making fences good, sowing clover, and plaster, &c., but with a reservation, if the land is sold before the expiration of his lease, it ceases on the 1st day of April next thereafter. I also, after considerable search, found a man that made me an offer for 300 acres of it, to be taken off the east end, which would include the cleared land. I told him I thought you would not take up the offer. His proposal was $5 per acre—one-half on the first day of April next, and the other half in three payments, without interest, until due. If you will not take it, he wishes me to inform him what is the lowest you would take. I think he would [give] $6 per acre. It would leave the balance of the land all woodland, for which I could get no offer. Will you please to give me instructions immediately. I have also received an offer for the "David Franks" tract, in Huntingdon county, which is $6; but I think $6 50, or $7, could be obtained. Will you please, also, to inquire if the trustees of Mr. Michael Gratz, deceased, have fixed on a price; and if so, what is the lowest price you would all be willing to take for it. The land is pretty weak, and a good deal broken up with water-ponds, sink-holes, &c., and there is but little timber on it, and about forty acres of it is in possession and claimed by another individual. These are things that all should take into consideration, and I have thought proper to mention them. Will you please to give me an answer as soon as convenient. I am going to the State of Ohio in about two weeks, and should like to write an answer before I go.

Very respectfully, your humble servant,
NER MIDDLESWARTH.

BEAVERTOWN, *August* 18, 1836.

SIMON GRATZ, esq., *Philadelphia.*

Your letter of the inst. was received. I had *wrote* to you a few days before I got it, and had written about the land in Columbia county. Since I received yours I have been around to all the persons who have

purchased land of me, and shewed them that you wanted the money due, but could get none at present, but have the promise for some for certain by the time I return from Ohio, (to which State I start to-morrow,) and shall be away about four weeks; and so soon as I receive any part of your money, shall have [it] put into bank, according to your directions. I should wish to hear from you by the time I return from the west. Your friend, truly.

NER MIDDLESWARTH.

(Please excuse haste.)

BEAVERTOWN, *October* 24, 1836.

SIMON GRATZ, esq., *Philadelphia.*

Yours of the 13th inst. was received on Saturday last. I will use my best endeavors to collect as much money for you as is possible. Mrs. Margeritz has considerable to pay, but I have as yet been unable to get one cent from her. She, however, promises to pay in a short time. John Sehr, jr., paid me $64 of his first payment about a week ago, and that is every cent of your money I have received since last spring. I shall go around to all that have to pay, and get as much for you as is to be had. Your lands you wish sold as soon as possible. I have never missed selling one inch for you where a fair price could be obtained, and will exert myself to sell wherever a chance offers. When I have called on those who are indebted for land sold for payment, [I] will let you know how much I have collected, and will try and get it to the bank at Harrisburg as you direct, but do not consider it worth while to go all the way down for the $64 I have received. You direct me to sell for one half cash, and the balance in two yearly payments, with interest. I do not believe I can sell one foot in that way, but will try so to do. The general rule here is to sell for one half down, and the instalments without interest, until they become due; and poor lands must be sold the best way a man can. It is very seldom an opportunity to sell is to be had.

Very respectfully, your obedient servant,

NER MIDDLESWARTH.

BEAVERTOWN, *November* 12, 1836.

SIMON GRATZ, esq., *Philadelphia.*

I have been trying to sell the tract of land on which George Knapp lived this good while, and have at last effected a sale; and had it not been for the 15 acres of timber land which I retained out of the tract recovered from Hinds, I could not have sold it at all; but the way it is now sold I consider as favorable as could be expected. The whole amount will be (if the number of acres hold out) about $1,700. I have agreed to cut the place and woodland into six several pieces, a part (say 100 acres) for $9 per acre, about 80 acres for $6 per acre, and the balance for $5; the payments in the usual way, the one-half in hand on the first day of April next, and the other half in three equal instalments;

the payment of which to be secured by bonds and mortgages. The place was very much worn out, and *no timber* on it worth mentioning, and of course the fences not good. I have sold to three individuals, to wit, Henry Ritter about 160 or 70 acres; to Daniel Kach about 40 or 45 acres, and to Jacob Stempff the balance. The deeds to be given them at the time the first half is paid, and the bonds and mortgages given for the other half, and possession to be given at the same time, after the purchasers have complied with their agreement. I have also reserved, according to your order, your right to approve or disapprove of the bargains. You will please therefore to inform me whether you confirm the sales or not. I have been to all the persons who are in arrears to you for purchase money on land sold by me, but have not been able to collect one dollar, but have the promise of considerable before New Year.

Very respectfully, your humble servant,
NER MIDDLESWARTH.

BEAVERTOWN, *December* 4, 1836.

SIMON GRATZ, esq., *Philadelphia*.

I regret you have sold the two tracts of land that were under my care in Mifflin county. James Robb, to whom you sold, was with me shortly before he bought of you, and offered me $3,000 for the two tracts, and we agreed to meet on the land a few days after, and see if it was not worth more, (I being anxious to make as good a bargain for you as possible;) but before we met, he went to you and bought for $600 less than he offered me the first offer. This has made an impression unfavorable to me, and they say we can buy cheaper from Mr. Gratz than from you. I feel confident that he would have given $1,000 more than he gave you. I received yours of the 21st inst., confirming the sales of the tract on which Kemp lives. I will have the different places surveyed as soon as I can; and the purchasers would like me to write deeds and mortgages, it would come so much cheaper to them than if wrote in the city. Perhaps you could meet me in Harrisburg some time this winter, and sign the different deeds there; if you would agree to such an arrangement, you could send me the necessary recitals of the different transfers of the tract, so as to enable me to write the deeds both for this tract and the one sold last spring to Kaly, Speglemeyer, and Baker. Please give me an answer soon. I have received an offer for one tract in Chapman township (the one Phillip Shaffer lives on.) I am offered $3 per acre; perhaps I could get 50 cents more. Shall I sell or not? Please tell me. I sent by one of my neighbors (Mr. Barlin) $75.00 to the bank of Harrisburg for you; it was every cent I could collect yet, and took out nothing for my pay. I will wait until I receive more, which will not be long, I hope.

Your obedient servant,
NER MIDDLESWARTH.

BEAVERTOWN, *January* 7, 1837.

SIMON GRATZ, esq., *Philadelphia.*

Will you have the goodness to send me a memorandum of the different transfers or conveyances that have been made of the two tracts of land I have sold, so as to enable me to write the deeds. The one is the "James Hunt" tract, and the other the "Charles Dungan" tract. I shall get some of your money next week from Charlotte Margeritz, perhaps $300, which I will send to Mr. Lesley by the first opportunity.

Your very sincere friend and humble servant,
NER MIDDLESWARTH.

BEAVERTOWN, *January* 16, 1837.

SIMON GRATZ, esq., *Philadelphia.*

To-day I received your favor of the 10th inst., containing the necessary recitals to enable me to write deeds for the James Hunt and Charles Dungan tracts of land, which I have sold, and in which is also a statement of the scarcity of money, &c., and wishing me to send all the money I can. Last week I received the following sums for you: $300 from Charlotte Margeritz, $52 from Nicholas Reitz, $34 from Henry Ritter, jr., and $15 from Daniel Price, making in all $401.00, out of which I paid the cost of the suit against Hinds, which amounted to $46.37½, and retained $20 for myself, leaving $334.62½ which belongs to you. I sent on yesterday by one of my neighbors to Mr. Lesley $335.00 for you. I do not expect any more money for you until the 1st of April, at which time there must be a considerable sum paid; and then, if you have no objection, I will retain as much as indemnify me for attending the suit against Hinds; the sums I have collected this winter are so small that I declined retaining any of it for attending to said suit, and more particularly because I was compelled to pay off the costs. I shall prepare the deeds as soon as I can, and if you come to Harrisburg this winter, please inform me some time before you go, and I will either send the deeds down or come myself with them. I am engaged in contracting for some of the Chapman township lands, and hope to close several of them in a short time.

Yours, truly,
NER MIDDLESWARTH.

BEAVERTOWN, *April* 19*th*, 1837.

SIMON GRATZ, esq., *Philadelphia.*

Enclosed I send you evidence of the deposit I have made in the Northumberland bank for you, it is $1,523.60, which I have been able to collect up to this time, but will receive some more in a short time. Money is very scarce, and I only wonder that so much has been paid by this time. The following is an account of what I have received, and what has been deducted:

Chapman lands.

Received of Simon Herald			$200 32
Do.	Michael Shirk		526 15
Do.	Philip Shaffer		100 00
Do.	Ludwick Kesteller		162 86
	The half of this is yours.		$989 33

Kaley, Baker, and Speglemeyer had a credit out of their hand money, $57.83, due to the commonwealth for purchase money on the "James Hunt" tract, and Speglemeyer owes the balance of hand money - - $33 15

One half received - - - - -	$494 66	
Received of H. Ritter - - - -	382 47	
Do. George Kaley - - - -	283 77	
Do. Daniel Kach - - - -	142 76	
Do. John Baker - - - -	162 54	
Do. J. Speglemeyer - - - -	115 00	
	$1,581 20	
Received of Henry Goss $25, part of his instalment - - - - - - -	25 00	
Received of Henry Ritter, jr., $6, the balance of his last year's instalment - - -	6 00	
Received of John Lehi $50 40, in part of his hand money of last April - - - -	50 40	
Whole amount received, - -		$1,662 60

Deductions.

5 per cent. on $1,662 60 - - -	$83 00	
For attending suit against Hinds - -	40 00	
Paid for surveying - - - - -	16 00	139 00
Balance, and amount deposited - -		$1,523 60

Henry Ritter has a balance of $210 to pay of his hand money. I have taken a great deal of trouble to collect your money, and shall get more as soon as I can. Please send me a receipt for this when received, and give me any instructions you think proper.

Yours, truly, NER MIDDLESWARTH.

HARRISBURG, *May 23d*, 1837.

SIMON GRATZ, esq., *Philadelphia*.

I deposited to your credit, in the branch bank at this place, on yesterday, $114, which is all I could collect since my last deposit in the Northumberland bank. I received from John Weider $100 for his instalment due this month, and $20 from Daniel Price, for his instalment; which, after deducting 5 per cent., would leave the above amount. On

the first day of June I am to receive some $200 from the Hackmasters, the one-half of which will go to your brother. I should like to hear whether you have settled with McCoy for the land in dispute in Chapman. Jacob Stumpff has paid no part of his hand money yet.

Yours, truly, NER MIDDLESWARTH.

BEAVERTOWN, *November* 28, 1837.

SIMON GRATZ, esq., *Philadelphia*.

Since I saw you, I have been over the tract of land taken up in the name of Ezekial Levy, and find it inferior to the Chapman township lands I sold. It is very hilly, and on a great portion of it is but little timber; a part of it once had good white pine timber, but I see the best part thereof has been cut off many years ago. Daniel Frantz, who lives on it, has made arrangement with his sons to assist him to pay for it, if he can buy it for what he considers a fair price. I told him that you had fixed the price at $3 per acre, which would bring it to $900; but he refused to agree to take it at that price. He offered $700, but says, rather than move off, he would give $800; the one-half on the 1st of May next, and the balance in three equal annual instalments, and will secure the payment thereof by mortgage, but says he would not be willing to give any other security. Will you please to inform me by the next mail whether I shall make a sale to him on these terms or not; he will be at my house to hear about it in about ten days; please, therefore, let me know immediately. I saw John Blanchard, esq., who was concerned with Mr. Potter in the suit you had against Stephen Hinds for the William Cox tract. He says he would like to be paid for his services. I told him I thought Mr. Potter had been satisfied by you for all the services rendered by himself and Blanchard, but would write to you and ascertain it. Will you please let me know how it is?

Yours, truly, NER MIDDLESWARTH.

HARRISBURG, *March* 5, 1838.

SIMON GRATZ, esq., *Philadelphia*.

Our convention just now nominated Joseph Ritner for Governor by a unanimous vote, and the other party have nominated David R. Porter, by a plurality of their votes, in their convention. I collected a little money for you since I was in your city, and have this day deposited it in branch bank at this place; the amount is $100. Whenever I receive more, I will either put it in bank for you or deliver it.

Yours, respectfully,

NER MIDDLESWARTH.

BEAVERTOWN, *April* 20, 1838.

SIMON GRATZ, esq., *Philadelphia*.

A few days ago I deposited in the Bank of Northumberland for you $430, since which time I have received $70 more, which I herewith enclose. Will you be so good as to send me the deed for Daniel Frantz

with the bearer of this letter (Mr. John Bickle;) he thinks he will be able to pay his hand money some time in May. Money is so scarce, it will be impossible to get all your instalments paid this spring that become due.

Yours, truly,

NER MIDDLESWARTH.

Please send me a voucher for $70.

BEAVERTOWN, *May* 3, 1838.

SIMON GRATZ, esq., *Philadelphia.*

Daniel Frantz & Son came to my house to-day, and brought one hundred dollars in Maryland and Virginia bank notes, and $100 in $2 notes of the Harrisburg and Portsmouth, &c., Railroad Company, and a bond, with safe security, for $200, with interest until paid, and says he will pay it in two or three months from this time, if you would indulge him that long. I agreed to keep the money and bond in my hands until I wrote to you for instructions about it. You will please inform me what to do in the matter; the poor man says he has not been able to get the whole of his land money in consequence of the hard times; but says, if he gets a little time he can do it. Please inform me whether [or] not I shall give him his title, take a mortgage, &c., on these conditions.

Very respectfully, your obedient servant,

NER MIDDLESWARTH.

HARRISBURG, *April* 15, 1839.

SIMON GRATZ, esq., *Philadelphia.*

When I heard from you last you were unwell. I hope your health has been restored. All the money I have been able to get for you this spring is $190, which I have this day deposited in the branch bank at this place to your credit. A number of persons who are owing for lands, this spring, *are* not (as yet) been able to meet their payments; some say they can pay on the 1st of May next. All I get shall be deposited for your use immediately. I should like to hear from you soon. I am here as a witness against the persons who are *indited* for mobbing the legislature, out of the State house, &c., at the beginning of the session.

BEAVERTOWN, *U. C., April* 20, 1839.

SIMON GRATZ, esq., *Philadelphia.*

On my return from Harrisburg I received your favor of the 9th inst. I am extremely glad to see you are getting well. All the money I have received this spring was deposited in the branch bank at Harrisburg to your credit, of which I hope you have received an account before now. I expect considerable more for you this spring, some time, and will inform you of it whenever I get it. You desire a general statement of sales made by me, and of money received, &c. This I will furnish you with as soon as possible, but am going to Ohio in a few days, and will be absent four or five weeks. I have no deed of Mrs. Phillips' in

my possession; please inform me what deed you alluded to. You ask whether I have collected the $200 from Frantz. I received exactly $200 from him on the 18th January last, and in a day or two after put it into the bank at Harrisburg for your use. As respects Mr. Blanchard's pay, I know nothing about your contract with Mr. Potter and him; the arrangement was made, without my knowledge or assistance, with those gentlemen. Yours, truly,

NER MIDDLESWARTH.

BEAVERTOWN, *May* 6, 1839.

SIMON GRATZ, esq., *Philadelphia*.

I have been detained a few days longer from starting to Ohio than I expected, which gave me an opportunity of making out and sending to you an account of all the sales of land made by me for you, which were included in Mrs. Phillips' deeds of 1833. I trust the amount will prove correct and satisfactory. To-morrow I start for Ohio, and shall return in about four weeks, and expect to receive some more money for you as soon as I return. Please write me about that time.

Yours, respectfully,

NER MIDDLESWARTH.

Endorsed—No. 1.—Circ't ct., Apr. S., 1839.—Cohen and al. vs. Gratz and al., eq. Copies of letters—N. Middleswarth to S. Gratz—filed by respondents—S. Gratz's executors, Feb'y 26, 1840.

Thirty-four original letters from Ner Middleswarth to Simon Gratz.

Dated 26 June,	1833.	Dated 15 April,	1836.
9 April,	1834.	6 August,	"
20 May,	"	18 August,	"
11 August,	"	24 October,	"
16 August,	"	12 November,	"
17 September,	"	4 December,	"
30 September,	"	7 January,	1837.
25 October,	"	16 January,	"
1 December,	"	19 April,	"
6 December,	"	23 May,	"
16 December,	"	28 November,	"
7 January,	1835.	5 March,	1838.
15 January,	"	20 April,	"
11 May,	"	3 May,	"
— May,	"	15 April,	1839.
17 October,	"	20 April,	"
		6 May,	"

Original of account of sales of land by Ner Middleswarth, dated the 6th May, 1839.

Original letter of George N. Frick to Simon Gratz, dated 21st March, 1836.

COHEN
vs
GRATZ.

Isaac Prince, being duly sworn, says, that the above is an accurate list of the original letters of Ner Middleswarth in the possession of the executors of Simon Gratz, and referred to in the plaintiff's notice; that there are no original letters of Ner Middleswarth to be found of date of 29th July, 1833, and 6th April, 1834, 20th October 1839, 23d January, 1839; and that there is no correspondence of E. L. Anderson, and no copies known to executors of letters of S. Gratz to N. Middleswarth, dated 2d August, 1834, 6th May, 1835, 18th October, 1836.

ISAAC PRINCE.

Sworn to before me, this 16th March, 1840.

S. BADGER, *Aldn.*

Endorsed: No. 1, circt. ct., Apr. s. '39. Cohen et al. v. Gratz et al. List of original letters deposited 16th March, 1840, by exrs. S. Gratz, and affdt. of I. Prince.

Filed 16 March, 1840.

COHEN et al.
vs.
GRATZ et al.

Circuit court U. S., E. D. Penn'a, April session, 1839, No. 1, in equity.

Replication to the several answers filed in the above case.

The repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto say, that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants; without this that any other matter or thing whatsoever in the said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed for denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct; and humbly pray as in and by their said bill they have already prayed.

BENJ. TILGHMAN,
For complainants.

March 16, 1840.

Endorsed: No. 1, circt. ct., Apr. s., 1839.

COHEN & al.
vs.
GRATZ & al.
Replication. Filed 16th March, 1840.

Afterwards, to wit, on the 18th day of March, A. D. 1840—on motion of Mr. Tilghman and Mr. T. A. Rudd, for complainants, Oliver

Hopkinson, esquire, is appointed examiner to take depositions in the above case.

In the circuit court of the United States, for the eastern district of Pennsylvania.

SAMUEL M. COHEN and Eleazer L. Cohen, citizens of the State of New Jersey,
vs.
SIMON GRATZ, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, and Joseph S. Cohen, citizens of the State of Pennsylvania.
} April sessions, No. 1, in equity.

Depositions of witnesses produced, sworn, or affirmed in the above cause before Oliver Hopkinson, examiner, at his office in the city of Philadelphia, on the thirty-first day of March, A. D. 1840, and on divers days thereafter, in pursuance of an order of court, as follows.

Benjamin Tilghman and T. A. Budd appear on the part of complainants; W. B. Reed appears for the executors of Simon Gratz; H. J. Williams appears for Joseph Gratz and Jacob Gratz; J. S. Cohen appears for self, Sarah M., Rebecca M., Rachel M., Elkalah M., and Abraham M. Cohen. Henry M. Phillips appears for Isaac Phillips, and admits that he received a notice, as representing Leah Phillips, John Moss, Lyon J. Levy, and Isaac B. B. Phillips.

John K. Cowperthwait, of the city of Camden, in the State of New Jersey, aged fifty-two or thereabouts, a witness produced, affirmed, and examined on the part of the complainants, deposes and says: Is a resident of the city of Camden, in the State of New Jersey; is the recorder of that city; has resided there about nineteen years; is acquainted with Samuel M. Cohen and Eleazer L. Cohen, the complainants in the above bill; they now reside next door to witness in the city of Camden, and they came so to reside in the latter part of the spring or beginning of the summer of eighteen hundred and thirty-eight, to the best of deponent's recollection; they have constantly so resided from that time till the present; they have resided in the same house during that time. They have kept during that time, and now keep, an apothecary store, and keep house there. They occupy the whole of the premises; thinks the premises belong to Benjamin P. Sisly. Those premises consist of a brick house, two stories in height, in Federal street, on the south side, between Second and Third streets; house is of fifteen or fourteen feet front, and about thirty feet deep. The lot runs back about one hundred and thirty feet to a twenty-foot wide alley; from the time they first came they have carried on actively, and to some ex-

rent, the business of apothecaries. They have improved the lot during this period, and have worked it well. Thinks the rent of the house is about one hundred dollars. Knows that the complainants have claimed and are entitled to the right of voting in the State of New Jersey, and believes they have voted, although he is not positive of that circumstance. Supposes, to the best of his knowledge and belief, that they earned their livelihood in the State of New Jersey, during the period of their residence there as aforesaid. They were, during that period, in constant attention to their shop, and were very industrious. Thinks they had no other residence during that period, to the best of his knowledge.

Cross examined by H. M. Phillips.

No one lived in the house with the complainants; a colored boy, that lived with complainants' brothers and sisters in the city of Philadelphia, has been there sometimes through the day. Does not know whether he stayed there during the night. Thinks that neither of the complainants is married; thinks they have two brothers and two or three sisters, all residing together in the city of Philadelphia. Complainants generally kept open their store as late as he sits up—about ten o'clock. The complainants were in the habit of coming to the city frequently—thinks not so often as daily. They took their meals at the house in Camden; they kept something like bachelor's hall, though I very often saw their sisters there. My impression is, that the victuals were cooked in the house. Has seen the cooking stove in the house; and has seen them buying provisions at the store in the neighborhood, and carry them into the house. Abraham M. and Joseph S. Cohen, two of the defendants, are brothers of the complainants. Does not know the names of the sisters. My impression is, that they opened the store in Camden about May or June, eighteen hundred and thirty-eight. They always, from the very start, kept open at night, as they now do. They claimed the right to vote, or rather they inquired whether they had the right to vote, before the October election of 1838. They then had no right, as it required a year's residence. Has understood from themselves that, prior to their opening store in Camden, they had resided in Philadelphia for many years past.

Questions by Mr. W. B. Reed. Witness attended this afternoon at the request of Mr. Abraham M. and Joseph S. Cohen. Thinks he was never requested to attend by the complainants. Neither Abraham [n]or Joseph Cohen informed him that they were parties to this suit.

Re-examined by Mr. Tilghman.

Has known the complainants to be called up at night for medicines; has no doubt that the complainants lodged there. Witness has also himself been in the habit of visiting Philadelphia; most of the other inhabitants are in the habit of paying visits to the city.

J. K. COWPERTHWAIT.

Deposition taken, reduced to writing, and by the witness subscribed and affirmed, this 31st day of March, 1840, before me.

OLIVER HOPKINSON, *Examiner.*

Joab Scull, of the city of Camden, of the State of New Jersey, aged about 44, a witness, produced, affirmed, and examined on the part of the complainants, deposes and says:

I have known the complainants nearly two years; I keep a store in Camden, New Jersey, and they dealt with me; I think they came there in June, 1838; they came to a house on the south side of Federal street, between Second and Third, where they now continue to reside; they opened an apothecary store when they first came there, and they have ever since continued to occupy and attend that apothecary store; their business has been actively and industriously carried on. No other person has attended to the business of that store; the business has never been closed or intermitted during that period. I believe they have resided there night and day; the articles they purchased at my store were of a quality and quantity sufficient for a family of that size. I have never known the complainants to carry on any business during that period elsewhere; I have purchased from them articles in their line of business.

Cross examined by Mr. Phillips.

I attended here at the request of Mr. Abraham Cohen and of Joseph S. Cohen, and not of the complainants; I have understood from them they lived in the city of Philadelphia prior to their removing into Camden; I do not know where the heavy articles of provisions were obtained by them; I believe they stayed there night and day; they are not married men, as I think; I have frequently seen them come to the city, and am in the habit of coming myself, almost every day.

JOAB SCULL.

Deposition taken and reduced to writing, and by the witness subscribed and affirmed to this 31st day of March, 1840, before me,

OLIVER HOPKINSON, *Examiner.*

Adjourned by agreement until Wednesday the eighth of April, 1840, at 4 o'clock, P. M.

Met pursuant to adjournment on the eighth of April, 1840; counsel present, Tilghman, Budd, Cohen, Phillips, and Reed.

Michael W. Ash, late of the city of Philadelphia, aged about fifty-one, a witness produced, sworn, and examined on the part of complainants, says: I was an alderman of the city of Philadelphia during the year 1833; depositions were taken before me, as an alderman, on the 13th and 14th of June, 1833; the papers I now hold in my hand, are the original depositions taken before me; they are in my own handwriting; I do not recollect that Mr. Kittera or Mr. W. B. Reed were present at the taken of the depositions; after refreshing my memory by looking at the depositions, I recollect that Mr. Kittera, Mr. Cohen, Mr. Purden, were present.

Adjourned until Friday the 10th April, 1840, at 4, P. M.

I have no recollection of Mr. Reed having been present; the depositions spoken of above were taken by me, under a rule obtained from the orphan's court of Lancaster county, in Pennsylvania, in the matter of a citation issued by that court on the 17th day of April, 1833, to Leah Phillips, surviving executrix of Joseph Simon, late of the city of Lancaster, deceased, to show cause, on the first day of the orphan's court, to be holden on the 17th June, then next, why she should not be removed from the executorship of the estate of the said Simon, deceased, &c.; I recollect that John Moss and Simon Gratz were examined before me on the occasion before spoken of, and upon refreshing my memory with the original depositions I now hold, I recollect that Lyon J. Levy was also examined. Each of these witnesses were also cross examined; the signatures attached to the several depositions are the true and genuine signatures of those witnesses respectively; the signatures of the said witnesses were written in my presence, and the witnesses were respectively qualified by me, as to the truth of their depositions. The witness being shown the paper marked "A" hereunto attached, says, that this is a true copy of the said depositions, and proceedings, as signed by the respective witnesses, and as taken in my handwriting, and which I returned to the said orphan's court of Lancaster county, I having this day compared the said paper, marked A, with the said original depositions and proceeding, so as to enable me to swear that it is a true copy thereof.

Cross examined by Mr. Phillips.

Witness says, I compared the papers as above myself; I compared them with the original depositions in my own handwriting. Being asked what other gentlemen besides those above enumerated were present at the examination before him, says, I recollect Mr. Abraham Cohen, but none others occur to me; I attend here on this occasion as a witness at the request of Mr. Joseph S. Cohen.

MICHAEL W. ASH.

Deposition taken and reduced to writing, the first part on the eighth April, 1840, and the latter part on the 10th April, 1840, and by the witness subscribed and sworn to this 10th day of April, 1840, before me.

OLIVER HOPKINSON, *Examiner*.

This is the document marked A, referred to by Michael W. Ash, esq., in his deposition.

O. HOPKINSON, *Examiner*.
MICHAEL W. ASH.

CITY OF PHILADELPHIA, *ss*.

In pursuance of the annexed rule, issued out of the orphan's court, held at Lancaster, for the county of Lancaster, in the State of Pennsylvania, to take the depositions of witnesses to be read in evidence on the argument of the rule, to shew cause &c., therein mentioned, and re-

ferred to Thomas Kittera and Joseph S. Cohen, esqs., counsel for the citation; Wm. B. Reed, esq., counsel for Mrs. Phillips, surviving executrix of Jos. Simon in the said citation mentioned and referred to; and John Purden, esq., counsel for Simon Gratz, administrator of Michael Gratz, deceased; and the witnesses whose testimony is contained in the following and annexed depositions, attended at my office in the city of Philadelphia, and number 102 north 5th street, on 13th and 14th days of June, A. D. 1833; which depositions were taken in the presence of all parties, as follows, to wit:

John Moss being duly called, and appeared before me, the subscriber, and refused to be sworn; afterwards John Moss was duly sworn to tell the truth, the whole truth, and nothing but the truth, in the matter above referred to.

I do know of an agreement between Leah Phillips, and Simon Gratz; I cannot exactly say whether it was in writing; I know there was an agreement to be made; Mr. Levy and myself were part the negotiators of it: I first knew that the agreement was to be made some time in the last winter; I knew of it before in the fall; I knew some time after Mr. Cohen had been there, and got her to sign a note to renew a note that was discounted in bank. It was myself and Mr. L. J. Levy that got her to make an arrangement with Mr. Gratz; I think Mr. Levy was the first one that called, and did see Mr. Gratz; I cannot state the date when I first came to negotiate with Mr. Gratz; can't say it was in Mrs. Cohen's lifetime; I don't exactly know whether any body was with me when I first talked to Mr. Gratz; I told him of the situation that Mrs. Phillips was in, and you, Joseph S. Cohen, coming there perpetually making a great noise, and telling her that she was selling herself; can't exactly say when she told me this; I did not consult any one, except Mr. Levy and Mr. Gratz, about this agreement; I did not speak to Jos. S. Cohen, or Mrs. Bell Cohen, about this business, nor to the Miss Cohens; I never did in my life conceal from any body anything; I am persuaded that the old lady, Mrs. Phillips, told me that Jos. S. Cohen came and made a great noise about some arrangement that was going on, and frightened her; I did witness certain papers signed Mrs. Leah Phillips, and Mr. Levy was by; I don't remember what they were; can't exactly say; Mr. Levy and myself were by when they were executed; I believe I signed as a witness, and so did Mr. Levy; I think some of the papers were drawn up by myself and some by Mr. Levy, some by Mr. Purdon. It was the will that we drew up of Mrs. Phillips. I think that Joseph S. Cohen has the chief of the papers of Joseph Simon. Mrs. Phillips told me so. Mr. Joseph S. Cohen had access to them; the chief of them were taken by Mr. Joseph S. Cohen in Mr. Phillips' lifetime. Mrs. Phillips told me so. Mr. Joseph Joseph S. Cohen was Mr. Phillips' attorney, and I have no doubt that he, Mr. Cohen, has them now, (the papers.) I don't remember that I had any conversation with Joseph or Jacob Gratz about this matter; I recollect speaking to Hyman Gratz once on the subject; I don't know the contents of the agreements. I heard them

read. I think Mr. Levy read them, or I read them, at Mrs. Phillips'; they were read. Mr. Simon Gratz was not present when they were read. We never signed nor witnessed any thing until we read them ourselves. Nobody requested me to attend there to witness the papers; this originated with me out of the purest benevolence. Mr. Isaac Phillips, a son-in law of mine, once interfered and did not succeed. When I first interfered in this business, Mrs. Phillips was in great distress, and after that I understood that the Messrs. Cohens made a great noise about it. It might have been while the arrangement was going on. I have no recollection of the substance of the agreement. If it was read, I should know it. It was about some lands belonging to Mrs. Phillips' father's estate. There was to be an agreement in writing that he was to give something for it, and if it brought, or she received more, she was to have the surplus; she was to have 500 dollars down, 500 next year, and 500 dollars the year after. Mr. Gratz told me that while she lived she should never want, but not in her presence. I do not exactly remember whether I communicated to her what we put in writing previously to putting it in writing. I think I last saw the agreement in January or February, or thereabouts; can't exactly say; I saw it at Mrs. Phillips, saw her sign it; Mr. Levy was present; I don't think I ever saw it after it was signed by Mr. Gratz. I saw a paper that Mr. Gratz had signed, and several papers that Mrs. Phillips had signed to send to her lawyers. I don't mean to say it was the same paper that both had signed. I don't know whether I last saw the paper at Mrs. Phillips' or at Mr. L. J. Levy's. I think Mr. L. J. Levy has it. I last saw Mrs. Phillips last Sunday week at my house. I can't say whether she had any property at the death of her husband; I should suppose not. I don't know whether she had any silver plate which she derived from her father. I have seen a note above fifty times, endorsed by Mr. Phillips; can't say whether it was more than one hundred dollars. I never knew that note with Mrs. Phillips' name on it, after the death of Mr. Phillips. I know that she told me that the Cohens came to put her name on the note. I don't know any thing more about that note. I don't know whether the note was for the accommodation of Mr. Phillips or Cohens. Abraham Cohen called at the Commercial bank to prevent the note from being cut down. I do not remember calling out Mrs. Phillips in the alley last winter, or of calling her out at any time while Miss Cohen was there. I will not answer on my oath whether I did or did not call Mrs. Phillips, and have any conversation at the door while Miss Cohen was there in the house. You, Joseph S. Cohen may frighten your old aunt, but not me—do you or do you not know whether Mrs. Bell Cohen or her children had any interest in the estate of Joseph Simon under his will?

Answer. I believe they were all concerned together; I never read the will.

Question. Do you know whether Levy Phillips had not suits with the administrators of Michael Gratz, deceased?

I will not answer that question. I remember that Mr. Isaac Phillips

lands, or any part thereof at the time they were sold by Simon Gratz or his agent, or the agent of his executors; also their marketable value now. State the situation of these lands, their quality, improvements thereon in February, 1833, what public roads, if any, are contiguous thereto, what public improvements have been made since 1833; the sales of said land, and to whom.

Interrogatory third. Have you any knowledge of the price or value of lands adjoining the land above inquired of? If yea, state your means of knowledge, what sales have been made at or about or since February, 1833, at what prices, what time, and to whom.

Interrogatory fourth. Are you acquainted with Henry Cosgrove, Mark McLees, and Simon Franks, or either of them; if yea, how long have you known them, or either of them; where do they reside; how long have they resided there? State also their occupations, and your knowledge of their opportunities of knowing the value of said lands. In 1833 how far from said lands did Simon Frank reside?

Interrogatory fifth. Is or is not Fee's tavern on land sold by Simon Gratz or his agent, or on the lands described in the second interrogatory; is or is not there a tavern stand on Cosgrove's land, and in what condition were, at the time of the sales of Simon Gratz's agent, the fences and buildings on said tract sold by him? State also the names of all the purchasers from said Gratz's agent, so far as your knowledge extends.

Interrogatory sixth. Were or were not any of said lands, or of any lands, sold by said Gratz or his agent to D. Knip, John Knip, or George Knip?

Interrogatory seventh. What is, or in 1833 was, the average value of said lands; did or did not a person of the name of Ulsh ever offer fifty dollars an acre for any portion of said lands in Union county; is or is there not a griss or saw mill on Mrs. Margerit's tract?

Interrogatory eighth. If you have any knowledge of the lands in Columbia county, state whether or not the Susquehanna canal, commonly called the Tide-water canal, has had any effect on the value thereof, or of land in that vicinity, if [in] that respect said value has been enhanced, and when said canal company was incorporated, its worth, begun and completed.

Interrogatory ninth. What has been the amount of taxes, expenses, and charges, generally paid by Simon Gratz or his representatives on said lands since 1833? State the same particularly.

Interrogatory tenth. Do you or not know any other matter or thing material to the defendants? If yea, state the same as if particularly interrogated thereto.

WILLIAM B. REED,
Def'ts solicitor.

SOLOMON ENGLE,
J. P., def'ts comm'r, Beavertown, Union county.

Endorsed: "No. 1, circuit court, April S., 1839.—In equity. Cohen et al. vs. Gratz et al., June 13th, 1842. Defendant enters rule for

commission to Beavertown, Union county, on interrogatories filed; and 15 days notice.

W. B. REED, *solicitor.*
THOMAS A. BUDD,
Comp'lts' solicitor.

June 13th, served on me.

Filed 16th June, 1812."

Circuit court, United States, April sessions, 1839.—No. 1.—In equity.

COHEN et al.
vs.
GRATZ et al.

Cross interrogatories to be administered to witnesses to be produced and examined on the part of the defendants in the above case, to serve also as interrogatories in chief to witnesses produced and examined on the part of the plaintiffs, under a commission to Union county, Pennsylvania.

Interrogatory 1. Did you know Levi Phillips, Leah Phillips, and Bilah Cohen, executors of the will of Joseph Simon, deceased, or did you know any or either of them? Were you at any time the agent of them or either of them; if so, when did you become such agent; under what authority and instructions? How long did you continue to be so employed, and when and under what circumstances did you cease to be such agent?

Interrogatory 2. Do you know of any taxes, expenses, and charges, paid at any time by the said executors, or on their behalf? If yea, state particularly what was the amount of taxes, expenses, and charges generally, at any time paid by the executors of Joseph Simon, or by any person on their behalf, on the lands inquired of in the second interrogatory on the part of the defendants; and if so, annex to your answer a particular account of the same, together with copies of all letters and documents in your possession, or within your knowledge or power, which relate thereunto.

Interrogatory 3. Do you know of purchase moneys, or securities for purchase money, due to the said executors or to Joseph Simon, on account of the above or any other lands derived under Trent's mortgage? If yea, annex to your answer a particular account thereof, designating what sums were received before, and what sums were received after, the 13th February, 1833, and by whom the said sums were severally received, and what amount yet remained unpaid, and from whom.

Interrogatory 4. At what time, from whom, and in what manner, did you become informed that Simon Gratz, or his alienees, claimed to have acquired title to all or any of the above lands, or securities, or moneys derived therefrom? Annex to your answer copies of all letters and other documents communicating the said information, whether derived from Simon Gratz or any other source.

Interrogatory 5. At what time did you first see or know of a certain caution signed by the children of Bell Cohen, denying the validity of

2/13.

the title claimed by Simon Gratz to these lands and securities; was the said information conveyed to you by letters or otherwise? If yea, annex to your answer copies of all such letters.

Interrogatory 6. Had you made any sales of these lands before you received a knowledge of such caution, and had any deeds been made in consequence of such sales to the purchasers? If so, state the names of such purchasers, and the date of such deeds, and where they are recorded.

Interrogatory 7. If any sales were made after you received a knowledge of such caution, state particularly whether the fact and nature of that caution was communicated to all, any, and to which of the said purchasers. Annex a list of such sales, containing the names and residences of the purchasers, the dates of said deeds, and whether the said deeds or any of them contained any warranty against the claims of the Cohen family or any of them.

Interrogatory 8. Did you at any time become, or offer to become, in any way, directly or indirectly, absolutely or under any contingency, either by writing or by parole, or by way of trust, interested in the said lands or any part of them, or in their proceeds or any part thereof; and are you now in anywise, directly or indirectly, interested in any tract or tracts, or parts of tracts of land, late the estate of Joseph Simon, or in the proceeds thereof? If aye, state particularly such interest.

Interrogatory 9. Did you or did you not receive from Simon Gratz, or his representatives, any drafts, charts, deeds, agreements, or accounts of moneys or balances due the estate of Joseph Simon from purchasers of all or any of the tracts referred to in defendant's second interrogatory; if aye, when did you receive them, or any of them? Produce the same and annex them to your deposition.

Interrogatory 10. Had you any correspondence with Simon Gratz in the year 1832, or before February, 1833, in relation to those lands, or to any negotiation or contract made or about to be made between him and Mrs. Leah Phillips, one of the executrixes of Joseph Simon? If aye, annex the letters from him, and copies of your letters, to your deposition, as well as all letters received from him since.

Interrogatory 11. Had you any conversation or conversations with Simon Gratz, or any person acting for him during the year 1832, or January and February, 1833, in relation to any negotiations or contract made or about to be made between him and Mrs. Leah Phillips? If aye, state the same fully and at large.

Interrogatory 12. State your place of residence, how far you reside from Catawissa, Columbia county; when you first became acquainted with the position of the tract of land opposite the town of Catawissa, formerly belonging to the estate of Joseph Simon. At whose request did you visit those lands?

Interrogatory 13. Do you or do you not know any other matter *matter* or thing material to the plaintiffs? If aye, state the same as if particularly interrogated thereto.

Plaintiffs name as their commissioner Absalom Swineford, esq., of New Berlin, Union county, Pennsylvania.

June 23, 1842. THOMAS A. BUDD, *pro complainants.*

Endorsed—"1, Ap. sess., 1839. In equity. Cohen et al. vs. Gratz et al. Complainants' cross interrogatories filed 23 June, 1842."

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, April session, 1839.

SAMUEL M. COHEN and Eleazer L. Cohen, citizens of the State of New Jersey,
vs.
SIMON GRATZ, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachael M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, citizens of the State of Pennsylvania. } No. 1.

The President of the United States, to Solomon Engle, J. P., commissioner, nominated by and on behalf of the defendants, and [L. S.] Absalom Swineford, esq., of New Berlin, Union county, Pennsylvania.

Know ye, that in confidence of your prudence and integrity, we have given unto you, and by these presents do give unto you, full power and authority, in pursuance of a rule lately made in the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain action in equity therein depending, wherein the said Samuel M. Cohen, and Eleazer L. Cohen are complainants, and the said Simon Gratz and Leah Phillips, and others, are defendants, to call before you, at a certain day and place by you for that purpose to be appointed, all and every person and persons who may be named to you by the said defendants as witnesses in the said action, and then and there to examine them on their respective oaths and affirmations on certain interrogatories hereunto annexed, touching the premises, and to reduce their testimony to writing; and when you shall have so done, you are to send the same to the said circuit court, closed up, and under your seals, plainly and distinctly set, together with this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this tenth day of June, A. D. 1842, and in the sixty-sixth year of the independence of the United States.

FRA. HOPKINSON, *Clerk circuit court.*

Circuit court of the United States. In equity.

COHEN et al.
vs.
GRATZ et al.

Interrogatories for witnesses, to be produced and examined under a

commission issued by defendants, to Beavertown, Union county, Pennsylvania.

Interrogatory first. Do you know the parties, plaintiffs and defendants, in this suit; if aye, how long have you known them, or either of them?

Interrogatory second. Have you any knowledge of certain tracts of land, or parts of certain tracts of land, situate in Union, Juniata, Mifflin, and Columbia counties, or either of them, late the property of Joseph Simon, deceased, the title whereto, since February, 1833, has been in Simon Gratz or his alienees? Do you or not know the value of these lands, or any part of them, in February or April, 1833, or at any time since, or at the present time? If yea, state your knowledge, particularly your means of knowledge, and especially the value of the land, or any part thereof, at the time they were sold by Simon Gratz or his agent, or the agent of his executors, also their marketable value now; state the situation of these lands, their quality, improvement thereon in February, 1833; what public roads, if any, are contiguous thereto; what public improvements have been made since 1833; the sales of said lands, and to whom.

Interrogatory third. Have you any knowledge of the price or value of lands adjoining the lands above inquired of? If yea, state your means of knowledge, what sales have been made at, or about, or since February, 1833, at what prices, at what time, and to whom.

Interrogatory fourth. Are you acquainted with Henry Cosgrove, Mark McLees, and Simon Frank, or either of them; if yea, how long have you known them, or either of them; where do they reside; how long have they resided there? State also their occupations, and your knowledge of their opportunities for knowing the value of said lands in 1833; how far from said lands did Simon Frank reside?

Interrogatory fifth. Is or is not Fees' tavern on the land sold by Simon Gratz or his agent, or on the lands described in the second interrogatory; is or is not there a tavern stand on Cosgrove's land; and in what condition were, at the time of the sale by Simon Gratz's agent, the fences and buildings on said tracts sold by him? State also the names of all the purchasers from said Gratz's agent, so far as your knowledge extends.

Interrogatory sixth. Were or were not any of said lands, or of any lands, sold by said Gratz or his agent to D. Knip, John Knip, or George Knip?

Interrogatory seventh. What is, or in 1833 was, the average value of said lands; did or did not a person by the name of Kloh *not* offer fifty dollars an acre for any portion of said lands in Union county; is or is there not a grist or saw mill on Mrs. Margeritz's tract?

Interrogatory eighth. If you have any knowledge of the lands in Columbia county, state whether or not the Susquehanna canal, commonly called the Tide-water canal, has had any effect on the value thereof, or of lands in that vicinity; in what respect said value has been enhanced; and when said canal company was incorporated—its work begun and completed.

Interrogatory ninth. What has been the amount of taxes, expenses, and charges generally, paid by Simon Gratz or his representatives, on said lands, since 1833? State the same particularly.

Interrogatory tenth. Do you or not know any other matter or thing material to the defendants? If yea, state the same as if particularly interrogated thereto.

WILLIAM B. REED,
Defendants' Solicitor.

SOLOMON ENGLE, J. P.,
Def'ts' Commissioner, Beavertown, Union co.

A true copy from the original filed.

FRA. HOPKINSON,
Clerk circuit court.

July 2, 1842.

COHEN et al.
vs.
GRATZ et al.

Circuit court, U. States, April sessions, 1839, No. 1, in equity.

Cross interrogatories to be administered to witnesses to be produced and examined on the part of the defendants in the above case—to serve also as interrogatories in chief to witnesses produced and examined on the part of the plaintiff under a commissioner to Union county, Pennsylvania.

Interrogatory 1. Do you know Levi Phillips, Leah Phillips, and Bilah Cohen, executors of the will of Joseph Simon, deceased, or did you know any or either of them; were you at any time the agent of them, or any of them; if so, when did you become such agent; under what authority and instructions; how long did you continue to be so employed; and when, and under what circumstances, did you cease to be such agent?

Interrogatory 2. Do you know of any taxes, expenses, and charges, paid at any time by the said executors on their behalf? If yea, state particularly what was the amount of taxes, expenses, and charges generally, at any time paid by the executors of Joseph Simon, or by any person on their behalf, on the lands inquired of in the 2d interrogatory on the part of the defendants; and, if so, annex to your answer a particular account of the same, together with copies of all letters and documents in your possession, or within your knowledge or power, which relate thereunto.

Interrogatory 3. Do you know of purchase money, or securities for purchase money, due to the said executors or to Joseph Simon, on account of the above or any other lands derived under Trent's mortgage? If yea, annex to your answers a particular account thereof, designating what sums were received before, and what sums were received after, the 13th of February, 1833, and by whom the said sums were severally received, and what amount yet remains unpaid and from whom.

Interrogatory 4. At what time, from whom, and in what manner did you become informed that Simon Gratz or his alienees claimed to have acquired title to all or any of the above lands or securities, or moneys derived therefrom? Annex to your answer copies of all letters and other documents communicating the said information, whether derived from Simon Gratz or any other source.

Interrogatory 5. At what time did you first see or know of a certain caution, signed by the children of Bell Cohen, denying the validity of the title claimed by Simon Gratz to these lands and securities; was the said information conveyed to you by letter or otherwise? If yea, annex to your answer copies of all such letters.

Interrogatory 6. Had you made any sales of these lands before you received a knowledge of such caution, and had any deeds been made in consequence of such sales to the purchasers? If so, state the names of such purchasers and the dates of such deeds, and where they are recorded.

Interrogatory 7. If any sales were made after you received a knowledge of such caution, state particularly whether the fact and nature of that caution *was* communicated to all or any, and to which, of the said purchasers; annex a list of such sales, containing the names and residences of the purchasers, the dates of the said deeds, and whether the said deeds, or any of them, contained any warranty against the claims of the Cohen family, or any of them.

Interrogatory 8. Did you at any time become, or offer to become, in any way, directly or indirectly, absolutely or under any contingency, either by writing or by parole, or by way of trust, interested in the said lands or any part of them, or in their proceeds or any part thereof; and are you now in any wise, directly or indirectly, interested in any tracts, or tract, or part of tracts of land, late the estate of Joseph Simon, or in the proceeds thereof? If aye, state particularly such interest.

Interrogatory 9. Did you or did you not receive from Simon Cohen, or his representatives, any drafts, charts, deeds, agreements, or accounts of moneys or balances due the estate of Joseph Simon, from purchasers of all or any of the tracts referred to in the defendants' second interrogatory; if aye, when did you receive them, or any of them? Produce the same, and annex the same to your deposition.

Interrogatory 10. Had you any correspondence with Simon Gratz, in the year 1832, or before February, 1833, in relation to those lands, or to any negotiation or contract, made or about to be made, between him and Mrs. Leah Phillips, one of the executors of Joseph Simon? If aye, annex the letters from him and copies of your letters to your deposition, as well as all letters received from him since.

Interrogatory 11. Had you any conversation or conversations with Simon Gratz, or any person acting for him, during the year 1832, or January and February, 1833, in relation to any negotiation or contract, made or about to be made, between him and Mrs. Leah Phillips? If aye, state the same fully and at large.

Interrogatory 12. State your place of residence, how far you resided

from Catawissa, Columbia county, when you first became acquainted with the position of the tracts of land opposite the town of Catawissa, formerly belonging to the estate of Joseph Simon. At whose request did you visit those lands?

Interrogatory 13. Do you or do you not know any other matter or thing material to the plaintiffs? If yea, state the same as if particularly interrogated thereto.

Plaintiffs name *name* as their commissioner Absalom Swineford, esq., of New Berlin, Union county.

THOMAS A. BUDD,
Pro complainants.

June 22, 1842.

A true copy from the original filed.

FRA. HOPKINSON,
Clerk circuit court, U. S.

July 2, 1842.

The execution of this commission appears in a certain schedule hereto annexed.

A. SWINEFORD.
SOLOMON ENGLE.

Depositions of witnesses produced, sworn and affirmed, and examined, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and forty-two, at the office of Solomon Engle, esq., in the township of Beaver, Union county, and State of Pennsylvania, by virtue of a commission issuing from the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, to Solomon Engle, esq., J. P., commissioner nominated by and on behalf of the defendants, and Absalom Swineford, esq., of New Berlin, Union county, Pennsylvania, directed for the examination of witnesses in a certain cause depending in said court, wherein Samuel M. Cohen and Eleazer L. Cohen, of the State of New Jersey, are plaintiffs, and Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Issac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, citizens of the State of Pennsylvania, are defendants.

Ner Middleswarth, of Beaver township, Union county, aged fifty-eight years, or thereabouts, being produced and affirmed, and examined on behalf of the defendants, deposeth as follows:

1. To the first interrogatory, on the part of the defendants, he answers: I know none of the plaintiffs. I knew Simon Gratz, Leah Phillips, John Moss, Jacob Gratz, and Joseph Simon Cohen; these are all the defendants I am acquainted with. I have known Simon Gratz for 20 or 25 years. I have known Leah Phillips since 1830. I have known John Moss for 18 or 20 years; Jacob Gratz perhaps 10 years; and J. Simon Cohen ten or 15 years.

(A. Swineford, Solomon Engle, Commissioners.)

To the second interrogatory on the part of the defendants he answers as follows: I have a knowledge of certain tracts of land in Union county; also one tract in Mifflin county. Those in Union county I am well acquainted with. They are all situated in Beaver township; and I think they have all been sold by me, as agent of Simon Gratz. Of this I am not positive; not having the deeds, I don't know. I know nothing of lands in Juniata county. I am acquainted with two tracts of land in Columbia county, but am not sure that they are included in those deeds. I do know what I believe to have been the value of them in February, 1833; and have known what I believe to be the value of them ever since, up to this present time. The means of my knowledge of the lands in Beaver township, Union county, is, I have lived in this township for more than forty years; a great part of which time I have been intimately acquainted with the situation of those lands; in 1833 they were, the improvements thereon were, much dilapidated; they remain large tracts, and had been in the hands of poor farmers for a long time. The value of those lands, at that time, was, in my opinion, from five to eight or nine dollars per acre. At the time they were sold by myself, as the agent of Simon Gratz, they would not have sold for that, whole tracts together. They were cut up by me into small tracts, so as to suit purchasers. Their marketable value, at this time, would be from eight to ten or twelve dollars, according to their size and the improvements thereon. Those lands are situated on what is called the Black Oak ridge, between the Beaver dams, in Union county, and Lewistown, in Mifflin county. Their quality is thin, sterile, gravel land. The improvements thereon, in February, 1833, were very poor, and much dilapidated, as I have already stated. There are two public roads leading through this valley to Lewistown, both of which run near or through some of these lands. No public improvements have been made since 1833. I will state all the lands I have sold in Beaver township, belonging to Simon Gratz, but am not certain that the title of the whole of those lands have been in Simon Gratz, only since 1833. I sold to Henry Goss and Henry Ritter, in 1834, two hundred and seven acres and ninety perches, for thirteen hundred dollars. In 1835, I sold to Charlotte Margeritz 117 acres and 122 perches, for seven and six dollars and fifty-seven cents. To Isaac Gearhart, the same year, 33 acres and ninety perches, for $293 68. To David Fessler, the same year, 12 acres and 74 perches, for $169 63. To Adam Baker, the same year, 9 acres and 107 perches, for $84 87. To Daniel Prince, the same year, 24 acres and 149 perches, for $149 58. To Nicholas Rietz, same year, 22 acres and 73 perches, for $190 87. To John Lair, 112 acres and 20 perches, for $672 75. To George Kaley, in 1836, 103 acres and 152 perches, for $623 68. To John Baker, same year, 59 acres and 16 perches, for $354 59. To Jacob Speglemeyer, same year, 57 acres and 115 perches, for $546 41. To Daniel Kach, same year, 47 acres and 94 perches, for $285 82. To George Ritter, same year, 156 acres and 139

(Solomon Engle, A. Swineford, Commissioners.)

perches, for $1,184 95. To Jacob Stump, same year, 36 acres and 67 perches, for $218 51.

3. To the third interrogatory on the part of the defendants he answers as follows: I have a knowledge of the price or value of the lands adjoining these lands. The means I have of being acquainted with the adjoining tracts of land is, that I pass through them every week, sometimes almost every day; and on a number of occasions have been executor or administrator for deceased persons; had the renting, and sometimes the sale, of lands. A number of sales have been made within the last five years. I sold a tract myself last fall, as executor of old Frederick Baker, near those lands. I sold 114 acres, on which there is a house, and barn, and apple orchard, and good deal cleared land, and balance well timbered, at 11 dollars per acre. This was sold at public sale. 50 acres of the same land I sold to John Lair, was sold at public sale last fall a year, by Lair's administrators, for $6 11 per acre.

4. To the fourth interrogatory on the part of the defendants he answers as follows: I am acquainted with Henry Cosgrove, Mark McLees, and Simon Frank. I have known Henry Cosgrove about three or four years, to best of my knowledge, and Mark McLees since last fall a year, and Simon Frank perhaps ten years. Henry Cosgrove resides within one mile from part of these lands, and 2, 3, and 4 miles of other parts. Mark McLees lives within a mile of where Cosgrove lives; within half a mile or more of some parts of the land. Simon Frank lives in Beavertown. Cosgrove has resided there three or four years. McLees has resided there since last spring a year. Simon Frank has lived here about three or four years. McLees did not live in this county before last spring a year; and Cosgrove has not lived in this county more than three or four years. Their opportunity of knowing the value of said lands at the present time is the same as other individuals living near them; but in 1833 they had no opportunity of knowing the value of those lands, not being residents of the country. Cosgrove's occupation is a tavern-keeper and store-keeper; and McLee's occupation is farming; but he is intemperate, and attends to drinking whiskey a great deal. I[n] 1833 Simon Frank, I think, lived in Middleburg, about from 16 to 20 miles from the lands; his opportunity of knowing the value of them was not very good, being a merchant, and not engaged in the purchase or sale of lands.

8. To the fifth interrogatory, on [the] part of the defendants, he answers as follows: Fees' tavern is not on the land sold by Simon Gratz, or his agent, as described in the second interrogatory. The one-half of that land was purchased nearly or quite 40 years ago, from John F. Mifflin, by the grandfather of the person who now keeps the tavern; and the other half was either purchased from Joseph Simon or Levi Phillips, his executors, some years after; but a balance of the purchase money, about $700, was paid to Simon Gratz. There is a tavern stand on Cosgrove's land, and a valuable one; a good stand and a good

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house, and situated in a place that is well calculated for a tavern stand. The buildings and fences on the land sold by me as Simon Gratz's agent are much out of order, as I have stated in my answer to the second interrogatory. The one tract I sold adjoins the tract on which Fees' tavern is situated. The names of the purchasers are given in my answer to the second interrogatory.

6. To the sixth interrogatory on [the] part of the defendants he answers as follows: None of those lands have been sold to Daniel Knip, John Knip, or George Knip, by Simon Gratz, or his agent.

7. To the seventh interrogatory on [the] part of the defendants he answers as follows: I have given my opinion of the average value of those lands at the present time and in 1833, in my answer to the second interrogatory; no person by the name of Kloh, or any other name, offered $50, or the one-fourth part of it, for any part of the lands, to my knowledge. There was no grist-mill nor saw-mill, nor any other building whatever, on the tract purchased by Mrs. Margeritz of me; nor is there a grist and saw-mill on [it] at this time.

8. To the eighth interrogatory on the part of the defendants he answers as follows:

I have a slight knowledge of two tracts of land in Columbia county, opposite to Catawissa. I was sent there in 1836, by Simon Gratz, to sell them. I could only get an offer for 4 dollars an acre, which I wouldn't accept. I do not know whether the making of the Tide-water canal has had any effect on the value of the land. I do not recollect when said company was incorporated without referring to the loan; neither do I know when its work began or was completed.

9. To the ninth interrogatory on part of defendants he answers as follows: The amount of taxes on those lands, paid by Simon Gratz, or his agent, has been nothing since 1833; the tenants on the lands have paid them; other expenses and charges have been considerable; I am, however, not able to state the precise sums paid. Mr. Gratz gave me five per cent. for selling, collecting, &c.; he also had to pay costs of a suit to recover one tract of 390 acres, of Stephen Hines, in Mifflin county, which was about $70 or $75 dollars. He also paid his attorneys—Messrs. Potter and Blanchard—$50 each. He also paid something like $100 for building a new barn by Henry Goss; he also had to allow purchasers something like $100 for interest and patenting fees, and other expenses that I cannot recollect.

10. To the tenth interrogatory on part of defendants he answers as follows: I do not know anything very material, only that I read the depositions of Henry Cosgrove and Mark McLees, filed in the district court of Philadelphia, and see many things therein stated that are errors, and cannot be relied on. I have also no hesitation in saying, that the lands sold by me, as before stated, were sold for their full value at the time, and also know that there was a general talk in the neighborhood at that time, that I was selling them too high. I also know that they could not have been sold for near the amount they brought, if they had not been cut up in small pieces, to suit purchasers.

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Examination by cross interrogatories.

1. To the first cross interrogatory he answers as follows:

I did know Levi Phillips and Leah Phillips, but had no personal acquaintance with Bilah Cohen. I was agent for the three executors of Joseph Simon, deceased, from the 15th April, 1829, till the death of Levi Phillips. My authority was a written power of attorney, signed by them and Samuel Breck, trustee of the daughters and representatives of John Ross, of Philadelphia, deceased, with power to sell lands in Union county. I continued to be employed for them until the death of Leah Phillips. (The power of attorney referred to is annexed, and marked A.) By a written notice (marked B, and hereto annexed) which I know to be in Simon Gratz's handwriting, and signed by Leah Phillips.

2. To the second cross interrogatory he answers as follows: I know of no taxes, expenses, or charges, paid by the executors, or their agent, and have no documents relating thereto, and there are none within my knowledge.

3. To the third cross interrogatory he answers as follows: I know of purchase money that was paid to Levi Phillips. I paid to him in April, 1830, $300; in Sept., of same year, $30; in June, 1831, $80 75; in Sept., 1832, I paid to Leah Phillips and J. S. Cohen, attorney for Bell Cohen, $50; all other moneys, arising from sales of land under my care, has been paid to Simon Gratz and his executors, a correct account of which has been rendered up to, I think, August, 1841, a copy of which I saw in the hands of Mr. Joseph Cohen.

4. To the fourth interrogatory he answers as follows: Some time in the month of February, 1833, I received a letter from Simon Gratz, which I cannot find, informing me that he had become the purchaser of those lands from Leah Phillips; and also the letter from her, marked B, above referred to; also a power of attorney from Simon Gratz, marked E, hereto annexed.

5. To the fifth cross interrogatory he answers as follows: I cannot tell that I ever saw any caution signed by the children of Bell Cohen, denying the validity of the title to those lands, by Simon Gratz. I frequently heard it stated that a suit had been brought on the subject of those lands; and Simon Gratz told me himself, that the Cohens were trying to make him some trouble about those lands, but they could do nothing, for he had acquired the title in a fair way from the surviving executrix of Joseph Simon, who was authorized to sell by the will of the said Simon.

6. To the sixth cross interrogatory he answers as follows: I know of no such caution; the dates of the deeds I cannot tell, not having them in my possession or any account of the dates. I have given an account of the sales of all the lands I sold, in my answer to the second interrogatory on the part of defendants. I don't know whether any of the deeds are recorded or not.

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7. To the seventh cross interrogatory he answers as follows: I know of no such caution; I have given an account of all the sales I made in my answer to the second interrogatory. The residence of all the purchasers is Beaver township, Union county. I think the deeds contain no warranty against the Cohen family, or any of them. I have no other account of the sales than what I have given and what have been rendered, as I stated before.

8. To the eighth cross interrogatory he answers as follows: I never had an offer made to me by any person, either directly or indirectly, to become in any way interested in said lands, or any part thereof, or in the proceeds, or any part thereof, except the five per cent. I was to receive for selling, collecting, &c., and never become, nor offered to become, interested, otherwise than I have stated. I am not interested at this time, nor never was, either directly or indirectly, in any lands belonging to the estate of Joseph Simon, or the proceeds thereof, except as above stated.

9. To the ninth cross interrogatory he answers as follows: I received from Simon Gratz several drafts of tracts of land, and also a number of deeds, which have been handed over to the purchasers. I never received any account of moneys or balances due the estate of Joseph Simon, deceased, from Simon Gratz. I had accounts of money in my hands, belonging to the estate of Joseph Simon, when I ceased to be the agent of Leah Phillips, an account of which has been rendered to Simon Gratz, as before stated.

10. To the tenth cross interrogatory he answers as follows: I know of no correspondence before February, 1833. The letters hereto annexed, marked C, are all the letters now in my possession, or that I can find at this time, received from Simon Gratz. I received a number of others, which I did not retain, considering them of no consequence. I kept no copies of my letters *wrote* to him. They are 17.

11. To the eleventh cross interrogatory he answers as follows: I had no such conversations, to my knowledge, as referred to in the 11th interrogatory.

12. To the twelfth cross interrogatory he answers as follows: I live in Beaver township, Union county, about forty-one miles from Catawissa, and lived there at the time I became acquainted with the lands opposite the town of Catawissa, belonging to the estate of Joseph Simon. I became acquainted with them in 1836, and visited them at the request of Simon Gratz, as before stated.

13. To the thirteenth cross interrogatory he answers as follows:

Adjourned till Thursday, the 18th, at ten o'clock, A. M.

A. SWINEFORD,
SOLOMON ENGLE,
Commissioners.

Aug. 18, 1842. Met, according to adjournment, at the office of Solomon Engle, esq.

Ner Middleswarth again:

13. To the thirteenth cross interrogatory he answers as follows: In

addition to the answer to the fourth cross interrogatory, a letter being produced, dated Sept. 3d, 1832, written by me and directed to Leah Phillips and Bell Cohen, (marked D, and hereto annexed,) I am satisfied that what I have stated in that letter is strictly true, but have no particular recollection of it at this time.

In addition to my answer to the seventh cross interrogatory, perhaps some of the deeds do contain such warranty, but don't recollect whether any of them, or how many.

In addition to my answer to the fifth interrogatory, upon the payment of $700, the deed was made by Simon Gratz to Jacob Fees and myself, in trust for the heirs of Jacob Fees as his executors, for the tract on which Fees' tavern stands.

In addition to my answer to the 11th cross interrogatory, I would say, that by a letter produced, marked D, and hereto annexed, it seems that Simon Gratz either wrote to me, or stated to me verbally, prior to the date of that letter, about a negotiation or contract he was making with Leah Phillips.

NER MIDDLESWARTH,
A. SWINEFORD,
SOLOMON, ENGLE,
Commissioners.

Isaac Fees, of Beaver township, Union county, aged about thirty-six years, being produced and sworn, and examined on behalf of the defendants, deposeth and saith:

1. To the first interrogatory on the part of the defendants he answers as follows: I saw Simon Gratz once, but don't know any of the other parties, plaintiffs or defendants.

2. To the second interrogatory on the part of the defendants he answers as follows: I know that Middleswarth sold the land referred to in Union county, but don't know any of the rest; in February, 1833, the value of the land was the way that he sold them, as much as I know about it. There is a difference; some of the land he sold might fetch from eight to ten and twelve dollars at the present time—that is, improved land; that which is not improved would not fetch more than he sold them. I wanted to buy, too; heard people talking about it; seemed *to* dear to me at what they asked me for it. Middleswarth was at me to buy, but I told him it was too dear; I could'nt buy it; that of David Koch, which he bought of Middleswarth, 37 acres, he offered to me for $700, and had the stuff to build the house already on the land; I told him it was too dear. The improvements in 1833 were all poor. The land is all slate and gravel. No public improvements since 1833; the improvements since that time are good. The road from Beavertown leads through some part of it; cross public roads lead through, and what they call the Middle road. The lands were sold at six dollars an acre—the general sale of it; Mrs. Margeritz, Stump, Koch, and Ritter, and John Lair, John Werder, George Kaley, Henry Goss, John Baker,

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Jacob Speglemeyer, David Fessler, and Reitz, that's all I know. Isaac Gearhart.

3. To the third interrogatory on the part of [the] defendants he answers as follows: The land I live on now was sold for ten dollars an acre, 300 acres; it adjoined these lands at one time, but do not now, 100 acres cut off which lies between. *No* of no other sales made since of lands adjoining. I live in the neighborhood.

4. To the fourth interrogatory on the part of the defendants he answers as follows: 'Twas three years last winter since I am acquainted with Cosgrove; he is a tavern keeper, and lives on Black oak ridge, Beaver township, Union county. I don't know what his opportunity is of knowing the lands. It is only about 3½ years since he resided there. Don't know much about McLees, *him*, he is a farmer—cutting up sometimes; has been there since last spring a year in Beaver township, Union county, about half a mile of some part of those lands; he did not live there at the time those lands were sold by Middleswarth. I *know* Frank about ten years, he lives here, and I *knowed* him in Swinefordstown. In 1833 he lived about fourteen and a half miles from those lands.

5. To the fifth interrogatory on part of defendants he answers as follows: Fees' tavern is not on the land that was sold by Gratz or his agent. Gratz received $700, the balance due by my grandfather, Peter Fees, from his executors. There is a tavern stand on Cosgrove's land. The fences were very poor at the time the lands were sold by Gratz's agent, and the buildings, too; on a good deal there was no buildings; the names of purchasers from Gratz's agent, so far as my knowledge extends, I have already stated.

6. To the sixth interrogatory on the part of defendants he answers as follows: Neither of the Knips bought land from Gratz or his agent, but Daniel Knip bought some of John Lair, of the same land.

7. To the seventh interrogatory on part of defendants he answers as follows: On an average the whole of the land in 1833 would not have fetched more than three or four dollars. I don't know any thing about Kloh's offer. There is no grist or saw [mill] on the tract of Mrs. Margeritz, that she bought of Gratz's agent.

8. To the eighth interrogatory on part of defendants he answers: I know nothing about the lands in Columbia county.

9. To the ninth interrogatory on part of defendants he answers as follows: Don't know any thing about the taxes, expenses, &c.

10. To the tenth interrogatory on part of defendants he answers: Don't know any thing more, not for defendants.

Examination by cross interrogatories.

1. To the first cross interrogatory he answers as follows: Don't know any of the persons mentioned, and never did.

2. To the second cross interrogatory he answers as follows: Don't know any thing about what is inquired of in this interrogatory.

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3. To the third cross interrogatory he answers as follows, as well as to the 4th, 5th, 6th, 7th, 8th, 9th, 10th, and 11th: I have no knowledge of any thing inquired of in these interrogatories.

12. To the twelfth cross interrogatory he answers as follows: My residence is in Beaver township, Union county; and as to the rest inquired of, I know nothing.

13. To the thirteenth cross interrogatory he answers as follows: *No* nothing more material to the plaintiffs.

ISAAC FEES.

Peter Goss, of Beaver township, Union county, aged 46 years or thereabouts, being produced, sworn, and examined on behalf of the defendants, deposeth and saith:

1. To the first interrogatory on part of defendants he answers as follows: Don't know either of the parties, plaintiffs or defendants.

2. To the second interrogatory on part of defendants he answers as follows: Don't know of any of the lands but those in Beaver township. Their value in 1833 was from 3 to 4 or 8 dollars. At this time their value is from 8 to 10 or 12 dollars. I bought a piece about 3 or 4 miles from this land in 1833, for about 5 dollars per acre, and I live in the neighborhood. In 1833, the improvements were very poor. A public road leads from here to Lewistown through part of it, and several cross public roads run through. No public improvements since 1833. Some sold to widow Margeritz, some to H. Ritter, Henry Goss, and others; the average price was from 4 to 9 dollars.

3. To the third interrogatory on the part of defendants he answers as follows: Knows nothing about what is inquired of in this interrogatory.

4. To the fourth interrogatory on part of defendants he answers as follows: I know Cosgrove and McLees, but don't know as I know Frank; have known Cosgrove 3¼ years; he resides in Beaver township, and has since I knew him. He never resided in the township before—a store and tavern keeper. McLees known since last fall a year; he lives in Beaver township, and has since I knew him; he is a farmer. They were not here when the land was sold. Don't know where Frank resided in 1833.

5. To the fifth interrogatory on part of defendants he answers as follows: Don't know whether Fees' tavern is on said lands; a tavern on Cosgrove's land. When tracts were sold by Gratz's agent, the buildings and fences were all pretty poor. The purchasers from Gratz's agent are as I have before stated.

6. To the sixth interrogatory on part of defendant he answers as follows: Don't know that any of said lands were sold to the Knips. Know there was none.

7. To the seventh interrogatory on part of defendant he answers as follows: In 1833, from 4 to 6 dollars was the average value of said lands. Knows nothing about Kleh's offer. No grist or saw mill on tract. Mrs. Margeritz purchased of Gratz's agent, but on her own tract.

(A. Swineford, Solomon Engle, Commissioners.)

8. To the 8th, 9th, and 10th interrogatories on part of defendant he answers as follows: Know nothing about the matters inquired of in those interrogatories, and know nothing more material to the defendants.

Examination by cross interrogatories.

1. To the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th and 13th cross interrogatories he answers as follows: Know nothing of the matters inquired of in these interrogatories.

PETER GOSS.

Herman H. Margeritz, of Beaver township, Union county, aged about 26 years, being produced and sworn, and examined on behalf of defendants, deposeth as follows:

1. To the first interrogatory, on part of defendant, he answers as follows: Know none of the parties, plaintiffs or defendants.

2. To the second interrogatory on part defendant he answers as follows:

I know some tracts in Union county, and one in Mifflin county. In 1833 they were worth about from 5 to 8 or 9 dollars, and now they are worth from 10 to 12 dollars, an acre. I lived near the land, and live on a tract now which was sold by them, which my mother bought. The quality of the land is some slate, some gravel, and a little white stone, situated on Black Oak ridge. The improvements were very poor in 1833, fences and all. It lays between the roads leading from Centreville to Lewistown, and the road from Adamsburg to Lewistown; and there are some few cross roads; no public improvements since 1833. One tract sold to my mother, Charlotte Margeritz, one to John Lair, one to N. Ritz, one to D. Fessear, one to Isaac Gearhart, one to H. Ritter, jr., one to H. Goss, jr., one to George Ritter, to Jacob Stump, Daniel Koch, John Weder, to John Baker, Jacob Speglemeyer, George Kaley—this [is] all I know. It sold from 5 to 9 dollars per acre.

3. To the third interrogatory on part defendant he answers as follows:

The value of the lands adjoining is from 10 to 12 dollars at the present time. Last fall a piece was sold adjoining, at public sale, to John Foster, by Mr. Middleswarth and Philip Baker, executors of F. Baker, deceased, at $11 per acre.

4. To the fourth interrogatory on part defendant he answers as follows:

Am acquainted with Cosgrove, McLees, and Frank; have known Cosgrove 4 years again spring; he lives in Beaver township, on Black Oak ridge, and has since I have known him; never lived in this township before; he is a tavern and storekeeper, and farms a little, too. Don't know what his opportunities of knowing these lands have been. McLees I have known about a year and 9 months; he lives in Beaver township, on Black Oak ridge, and has lived there since I knew him. Don't know his opportunity of knowing these lands. Don't know

how far Simon Frank lived from the lands in 1833; he lived in Swinefordstown, about 14 or 15 miles to the nearest.

5. To the fifth interrogatory on part of defendant he answers as follows:

Fee's tavern is not situated on the lands referred to here. There is a tavern stand on Cosgrove's land. The fences and buildings were very poor when the land was sold by Gratz's agent. Have stated all the names of purchasers before, as far as I know.

6. To the sixth interrogatory on part defendant he answers as follows: There was no land sold to the Knips by Gratz or his agent.

7. To the seventh interrogatory on part defendant he answers as follows: In 1833 the average value of said lands was from 5 to 6 dollars; know nothing about Kloh's offer. There is no grist or saw mill on the tract Mrs. *Mrs.* Margeritz bought of Gratz's agent.

8. To the eighth interrogatory, ninth and tenth, he answers as follows: Know nothing of the matters inquired of in these interrogatories, and know nothing further material to the defendants.

Examination by cross interrogatories.

1. To the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th and 13th cross interrogatories he answers: I know nothing of the matters inquired of in these interrogatories. I live in Beaver township, Union county, and know nothing material for the plaintiffs more.

HERMAN H. MARGERITZ.

John Goss, of Beaver township, Union county, aged about forty-five years, being produced, sworn, and examined, on behalf of the defendant, doth depose and say, as follows:

1. To the first interrogatory on the part of defendant he answers as follows: Don't know either of the parties, plaintiffs or defendants.

2. To the second interrogatory on part of defendant he answers as follows: Know of no lands but those in Union county; their value in 1833 was from 4 to 6 dollars, and now about from 8 to 12 dollars. I lived about two miles from the nearest part; was born there, and lived in this township ever since. They lay along the road leading from Beavertown to Lewistown; their ground is poor; in 1833 their improvements were poor. The post road from Northumberland to Lewistown leads through, and another from Adamsburg to Margeritz mill; no public improvements since 1833. The lands were sold from 4 to 5 or 6 dollars; they were sold to the widow Margeritz, to John Lair, to David Fessler, N. Rietz, Henry Goss, jr., Henry Ritter, jr., George Ritter, jr.—this [is] all I know.

3. To the third interrogatory on part of defendant he answers as follows: My father gave a piece adjoining this to my brother-in-law, which was valued at $5 per acre; another piece adjoining was sold him at $11 per acre.

4. To the fourth interrogatory on part of defendant he answers as

follows: Know Cosgrove, McLees, and Frank; I have known them ever since they *live* here, about 3½ years; I have known Cosgrove, he lives on Black Oak ridge, and lived there 3½ years. McLees I know since a year last spring, when he moved to Black Oak ridge. Don't know what means of knowing the lands they had before they came here. Cosgrove [is] a store and tavern keeper and farmer. McLees lives on a farm, but I don't think is doing any thing. S. Frank lived about 13 or 14 miles from said lands in 1833.

5. To the fifth interrogatory on part of defendant he answers as follows: I don't know that Fee's tavern is on land sold by Gratz's agent. There is a tavern stand on Cosgrove's land. The fences and buildings on the tracts sold by Gratz's agent were poor in 1833. I have related the names of purchasers before, as far as I know.

6. To the sixth interrogatory on part of defendants he answers as follows: None of the said lands were sold to the Knips.

7. To the seventh interrogatory on the part defendant he answers as follows: In 1833 the average value of said lands *were* from 5 to 6 dollars, and now from $8 to $12. Don't know any thing about Kloh's offer; there is not a grist and saw mill on Mrs. Margeritz's tract that she bought of Gratz's agent.

8. To the 8th, 9th, and 10th interrogatories on part defendants he answers as follows: Know nothing of the matters inquired of in these interrogatories, and know nothing material more for defendants.

Examination by cross interrogatories.

1. To the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th and 13th cross interrogatories he answers as follows: Know nothing of the matters inquired of. I live in Beaver township, Union county, and know nothing further material for the plaintiffs.

JOHN GOSS, Jr.
A. SWINEFORD,
SOLOMON ENGLE,
Commissioners.

John Peter, of Beaver township, Union county, aged about 47 years, being produced, sworn, and examined, on behalf of the defendants, deposeth as follows:

1. To the first interrogatory on the part of defendants he answers as follows: Don't know either of the parties, plaintiffs or defendants.

2. To the second interrogatory on part defendant he answers as follows: I know only the land in Union county. In 1833 we thought it at a high price from $5 to $6 per acre. I wanted to buy a piece at $5.50, and he would not give it. At present the value is from $8 to 10 and $12 per acre. I, as administrator of John Lair, sold some of the land on the 16th November, 1840, for $6.11 per acre at public sale. I was born near the land, lived four years on it, and lived near it ever since. The improvements in 1833 were poor; the land is poor, gravel

(A. Swineford, Solomon Engle, Commissioners.)

land, and some a little better. There are two public roads that run through, and some cross roads; no public improvements since 1833; sold some to Henry Goss; 1, to H. Ritter; 1, to John Lair; 1, to Geo. Kaley; John Weder, 1; widow Margeritz, 1; D. Fessler, 1; Isaac Gearhart, 1; N. Reitz, 1; George Ritter, 1; John Baker, 1; Jacob Speglemeyer, 1;—this [is] all I know. The most was sold for $6 per acre.

3. To the third interrogatory on part of defendants he answers as follows: A piece of land adjoining Middleswarth sold for $11 per acre; some was sold for about $40 per acre, about two miles from this land; it is well improved and good [illegible.]

4. To the fourth interrogatory on part of defendants he answers as follows: I knew H. Cosgrove, Mark McLees, and Simon Frank; have known Cosgrove three and a half years, McLees one and a quarter, and Frank about three years; Cosgrove lives in Beaver township, and McLees too, and Frank too; they have all lived here, and I know them; Cosgrove is a tavern and store-keeper and farmer; McLees the the first year farmed, and since he is mostly at Cosgrove's tavern; don't know where Frank lived in 1833; I don't think McLees and Frank are much acquainted with the land.

5. To the fifth interrogatory on part of defendants he answers as follows: Fees' tavern is not on land sold by Middleswarth, as agent of Simon Gratz; there is a tavern stand on Cosgrove's land; the fences and buildings were poor when the lands were sold by Gratz's agent. I have already stated the names of purchasers so far as I know.

6. To the sixth interrogatory on part of defendants he answers as follows: Middleswarth sold none of the land to the Knips.

7. To the seventh interrogatory on part of defendants he answers as follows: In 1833 the average value was about $4, or $4 50; know nothing about Kloh's offer; there is no grist or saw mill on Mrs. Margeritz's tract that she bought of *of* Middleswarth.

8. To the 8, 9, and 10th interrogatories on part of defendants he answers as follows: Know nothing of the matters inquired of, and nothing more material to the defendants.

Examination by cross interrogatories.

1. To the 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 cross interrogatories he answers as follows: Know nothing about the matters inquired of in these interrogatories; live in Beaver township, Union county, and have nothing more material for the plaintiffs.

[Name illegible.]

We do certify, that the witness above named *were* produced and examined, after being sworn, before us on the days above mentioned, Aug. 18, 1842.

A. SWINEFORD,
SOLOMON ENGLE,
Commissioners.

(A. Swineford, Solomon Engle, Commissioners.)

These are the 17 letters marked "C," referred to by Ner Middleswarth in his examination.

NER MIDDLESWARTH.

A. SWINEFORD,
SOLOMON ENGLE,
Commissioners.

PHILADELPHIA, *June* 30, 1834.

DEAR SIR: Annexed you have draught of lands on Aughwick Creek. Mr. Harvey, my former agent, lives at Shirleysburg, through which you pass in going to them; he will accompany you to the lands, and give you all information relative to them. It is my desire to sell these lands, if eight dollars can be procured for No. 1; for No. 2, four dollars per acre; No. 3, eight dollars per acre; this tract is unpatented, the purchaser to patent at his own cost; No. 2 is patented, and No. 1, the dues to the State paid, and the patent only to be taken out. The tract name of David Franks, is also worth 8 dollars or more; the trustees of my father's estate desire to sell. The Aughwick is navigable for arks from all these tracts; and last year a plantation near Shirleysburg sold at 20 dollars per acre, no better than the No. 1, 3, 4. Mr. Breck is anxious to sell the land held jointly with me. I stated to him that I was disposed also to sell, and that I would say to you, that if you procure a purchaser for it, at such price as you believe it was really worth, to sell; he expressed the same opinion, and said he would do so also; he will write you. I am very desirous to close the sales of all my lands, and I write to you to let it be known that such is my intention, whenever a reasonable price can be obtained. I shall be pleased to here from you after your return from Aughwick. I wrote you some days ago, saying that I had requested Mr. Lesley to send you deed for Ferguson tract.

Very sincerely, I am, dear sir, your obedient servant and friend,

SIMON GRATZ.

PHILADELPHIA, *August* 24, 1836.

NER MIDDLESWARTH, esq.

DEAR SIR: I have sold to Mr. James Robb the two tracts of land, name of James Wilkes and Daniel Lawrence, in Mifflin county. He is entitled to the rents from day of sale, and the possession of the land. He has deed for the lands.

Your friend and servant,

SIMON GRATZ.

Ner Middleswarth, esq., Union county.

PHILADELPHIA, *April* 5, 1836.

NER MIDDLESWARTH, esq.

DEAR SIR: I hope you are enjoying yourself at home after the fatigues of the winter at Harrisburg. I see that the treasurer of your county has advertised the tract of land in Chapman township, Union

county, for taxes in name B. M. Cohen, 413, tax 1.20; B. M. Cohen, 271, 96. These are five of the tracts belonging to me, and although the name of B. M. is wrong, therefore be pleased to pay off the taxes. Money is very scarce here, and as I have some to make up by the 20th inst., if you can receive the amount sales, it would be agreeable to receive certificates of deposit before that date. The Columbia lands be pleased to sell for the best prices you can, half cash, residue in 1 and 2 years, with or without interest; but it would be most agreeable to sell for cash entirely if it can be done to advantage.

Sincerely your friend and servant,

SIMON GRATZ.

(Postmarked) Philada., 6th April, 1834.

Ner Middleswarth, esq., Beavertown, Union county, Pennsylvania.

PHILADELPHIA, *April* 24, 1838.

NER MIDDLESWARTH, esq.

DEAR SIR: I am favored with your letter of the 20th inst. by Mr. J. Bickle, covering seventy dollars, and advising of your having deposited to credit my account at Bank Northumberland four hundred [and] thirty dollars. I now send you my deed to Daniel Frantz, for the tract of land surveyed, name of Ezekiel Levy, in Berry township, Union county, containing 306 acres; the patent to Aaron Levy for the same. The deed contains the description of title. Upon Frantz making payment of the hand money, and giving satisfactory security and morgtgage for the subsequent of instalments, be pleased to hand him the deed, &c. Be pleased to advise me when you have this done, and when deposit is made in Northumberland bank.

Sincerely and respectfully your obedient servant,

SIMON GRATZ.

Consideration	- -	$850
Deed and ack.	- -	2 25
		$852 25

Ner Middleswarth, esq., Beavertown, Pa.

PHILADELPHIA, *May* 29, 1835.

NER MIDDLESWARTH, esq.

DEAR SIR: I am favored with your letter, of 24th inst., informing of deposite made to my account at office discount and deposite, Bank Pennsylvania, Harrisburg, and of which I was informed by Mr. Lesley. At the last session a law passed grading the interest chargeable on patenting lands, which will reduce cost patenting the P. Palmer tract below the sum of $200. A man named Mosher, who has resided in Beavertown, and who says you are acquainted with him, called on me, and proposed purchasing the Lawrence and Wilkes tracts of land. I referred him to you. I suppose these tracts to be worth between 5 and 7 dollars per acre; they are patented. I believe lands will advance in

2023.

price this year, owing to the great extension of internal improvements and the general prosperity of commerce, which can only be affected by the political degradation of the Government. This I hope will not long continue. I feel inclined to dispose of all my distant lands, and shall not refuse a reasonable offer for any in your vicinity.

Very respectfully, I am, dear sir, your obedient servant,

SIMON GRATZ.

The Indemnity bill passed the French Chambers by large majority, of which, no doubt, you have been informed by your papers.

(Postmarked) Philada., 29th May.

Ner Middleswarth, esq., Beavertown, Union county, Pennsylvania.

PHILADELPHIA, *September* 24, 1834.

NER MIDDLESWARTH, esq.

DEAR SIR: I am in receipt of your letter of ye 17th inst. I am content with the resale of the Philip Palmer tract of land. I do not know what claim the State has for patenting this land. If the former owner patented it and paid for the patenting, the State has no claim upon the land; but if the former claimants gave mortgage, then it is our best way to take no notice of such patent, but go on and patent anew, as if none had yet issued, as of right we are entitled to do, if it is our interest to adopt the plan. I shall be pleased to have propositions for the Chapman township lands, and any others. The checks you sent me are to your credit.

Respectfully, your friend,

SIMON GRATZ.

(Postmark) 24 Septr., Phila.

Ner Middleswarth, esq., Beavertown, Union county, Pennsylvania.

PHILADELPHIA, *January* 25, 1838.

NER MIDDLESWARTH, esq.

DEAR SIR: On my return from Harrisburg I found your favor of 18th inst., and note its contents. I had, when at Harrisburg, directed Mr. Robb to pay over to Mr. Leslie the amount of his bond. The sale to Frantz is satisfactory, and I trust they will comply punctually. I think your claim will induce them to do so. When you have ascertained the interference with McCoy, and find that his title will take a part of the Hockmaster land, you can complete my contract with him in your own name. You know my views on this. I am inclined to believe that there can be no revival of business of stable character until some act of the General Government shall restore a sound currency and uniform. This, I think, cannot be effected but by adopting, as fiscal agent of Government, [the] Bank of [the] United States or other bank of good standing, or by a new bank of [the] United States. At Harrisburg, I believe, nothing will be done this session which will affect the banking system, either by legalizing the importation of specie, or

coercing them to resume. I hope you will be enabled to collect, in the spring, the instalments becoming due for lands sold.

Very sincerely, your friend and servant,

SIMON GRATZ.

Things continue disjointed, and great demand for money.

(Postmark) Philada., Jan. 26, Pa.

Ner Middleswarth, esq., Beavertown, Union county, Penna.

PHILADELPHIA, *January* 1, 1834.

NER MIDDLESWARTH, esq., *Beavertown, Union county.*

DEAR SIR: Messrs. Potter & Blanchard *asks* for a power [of] attorney from me to make deed and release to Hind. I send by mail, to Lewistown, such power—package directed to them or yourself, care of Mr. Elliott, which be pleased to call and receive, if these gentlemen have not. I should greatly prefer receiving the balance due on this land, including interest until paid, to a recovery of the land; and you are authorized to make such arrangement on receiving the money, or a part—say half or two-thirds, balance amply secured. Be pleased to take with you the account of balance forwarded to you in September last. By this account, the balance due up to 9th August, 1817, was $2,255 26; the date of the tender of the deed was ; from which period interest on $2,051, the original purchase-money, would be due up to the time of the proposed settlement. I hope you will now have this business brought to a close, either by getting the money or the lands. Please take all the papers with you to the court.

With the compliments of the season, and best wishes for your welfare, I am, dear sir, yr. friend, &c.

SIMON GRATZ.

Ner Middleswarth, esq., Beavertown, Union county, Pennsylvania.

PHILADELPHIA, *December* 3, 1837.

NER MIDDLESWARTH, esq.

DEAR SIR: I am in receipt of your favor of the 28th ulto. I agree that you sell to Daniel Frantz the Ezekiel Levy tract of land for eight hundred dollars; one-half payable on 1st May next, and the residue in three equal annual instalments, secured by mortgage; but the payment to be made on 1st May not to be delayed, and, if not then made, the sale to be void. I am of opinion that the payment to Mr. Potter included all lawyers' fees in case of Haines.

Respectfully, your friend and servant,

SIMON GRATZ.

(Postmarked) Phila., Dec. 3; Blairsville, Dec. 6, Pa.

Ner Middleswarth, esq., Beavertown, Union county, Penna.

PHILADELPHIA, *January* 23, 1837.

NER MIDDLESWARTH, esq.

DEAR SIR: The amount of the expenses attending the suit v. Hinds, and your compensation on the amount directed, as stated by yours of

the 16th instant, together with your commissions on sums received, you will retain in your hands from the spring payments. When you will have the deeds drawn, send them to Mr. Lesley, at Harrisburg, with directions, if I am not there, to forward them to me by private conveyances. A moiety of the three tracts in Chapman township belongs to me, and the other moiety I hold in trust for some of my brothers, and which I intend to convey to them. In proposing any sale, let it be understood that the consent of the parties interested is to be had. Can you sell the tract in the name of Ezekiel Levy?—this is solely mine.

Your friend and ob. servant,

SIMON GRATZ.

(Postmark) Phila., Jan. 23.

Ner Middleswarth, esq., Beavertown, Union county, P.

PHILADELPHIA, *October* 26, 1835.

NER MIDDLESWARTH, esq.

DEAR SIR: Since my last to you, I am in receipt of your favors of the 17th and 20th inst. I approve and confirm the sales you have made of parts of the William Cox tract of land, and hope you will be enabled to effect other sales. My last advises you that there was at present no probability of making the canal on east side river, if we were permitted to go across. We shall of course decline purchasing of Mr. Gale. I hope our political atmosphere will in future be freer from contamination, and that the good old Washington politics will direct our opinions. I congratulate you on the result.

Your friend and ob. servant,

SIMON GRATZ.

(Postmark) Phila., 27 Oct.

Ner Middleswarth, esq., Beavertown, Union county, P.

PHILADELPHIA, *May* 1, 1837.

NER MIDDLESWARTH, esq.

DEAR SIR: Your favors of the ult., conveying certificate of deposite at Northumberland bank for , came duly to hand. In the Atlantic cities we are reaping fully the effects from the Government interference with the currency. Already losses and failures have taken place, in amount more than two or three times the amount of all the gold and silver in the United States. All our banks are so extended, that they are unable to afford any relief, and are alarmed for their own safety. In many instances houses, worth three times the amount of their responsibilities, have been forced to suspend payments; and the general belief is, that as yet we have not reached the worst. You will infinitely oblige me by collecting for me all the money you can, from instalments due; or, if practicable to dispose of any of the bonds at a discount of 8 or 10 per cent. I would willingly submit to the loss. You will not suppose for a moment that I think it needful to urge you; but, under present circumstances, it may be that you might effect my

object, having the privilege of thus paying for it. Please let me hear from you. Your friend, &c.

SIMON GRATZ.

(Postmarked) Phila., May 1.

Ner Middleswarth, esq., Beavertown, Union county, P.

PHILADELPHIA, *June* 4, 1838.

NER MIDDLESWARTH, esq.

DEAR SIR: I wrote you under date of 10th ultimo, to which I refer, since which I am not favored with any of yours. I am owner of ⅔rds of about 18,000 acres of good land in Clearfield county, which I am anxious to dispose of to settlers. These lands are situate about (beginning) 5 miles north of Phillipsburg, on which there are a few settlements, which is called Cooper's settlement. The quality of the soil is very good, and the timber unusually fine. The tract extends nearly to the west branch of the Susquehanna. Do you think you could induce some of your neighbors to emigrate to them, should the soil, &c., be such as would please? If you think it would suit you to undertake the sale of these lands, I will confer with the owner of the other ⅓ part, and forward you a draught of the lands. This body of lands is about 28 miles N. W. from Bellefont, and is considered the best body of land in Clearfield county. Please let me hear from you as early as convenient.

Respectfully, your obedient servant, SIMON GRATZ.

Ner Middleswarth, esq., Beavertown, Union county, Pa.

(Copy.) NORTHUMBERLAND, *July* 20, 1837.

S. GRATZ: SIR: On arriving home yesterday I found a letter from you respecting the Mohontonys land, and you say your tenants have lived on the land 21 years. If so, you will hold all you have cleared and under from that length of time, which, if I am informed right, will be trifling. You say you will give me 75 cents for all I hold within the limits of the tract Hockmaster and Stump lives on. I am well aware that the land is poor, worth but trifling, and therefore would be glad to avoid a suit at law; to avoid which I would be willing to make a sacrifice. I will take one dollar for all the land within your lines, or give you two dollars for all the land your lines *better* in outside of my line. I knew nothing of your letter when I met you in the city, or I would have spoken to you. Let me hear from you soon.

Yours, WM. McCOY.

PHILADELPHIA, *February* 25, 1837.

NER MIDDLESWARTH, esq.

DEAR SIR: You will find above [a] copy of Mr. McCoy's letter to me. I have written to him to forward me a draft, showing the interference of the tract of land on which Hockmaster and Stump lives, and what you agreed to sell them. You see that, by complying with the arrangement, I can make title to the purchasers, if they are yet dis

posed to adhere to your contract with them. Of this be pleased to inform me. I expect to be in Harrisburg about the 8th March, and hope it will be convenient for you to meet me there, where we can confer on all matters relating to sales, and execute deeds, &c.

Your obedient friend and servant, SIMON GRATZ.

(Postmarked) Phila., Feb. 28, Pa.

Ner Middleswarth, esq., Beavertown, Union county, P.

PHILADELPHIA, *May* 25, 1837.

NER MIDDLESWARTH, esq.

DEAR SIR: I have your favor of the 23d inst. My brothers declined the indemnity of Hockmaster. I have agreed with Mr. McCoy, and he was to have forwarded me [a] deed; but as yet it is not at hand. I understood from him that he was going to the West. Perhaps he has not returned yet. I think it would be prudent to retain in your hands the one-half of Hockmaster's portion, which is to go to my brothers, for the present, until after the affair with McCoy is arranged. You were to retain a sum for my incidental expenses on these lands out of money received from Chapman lands. Have you done this? My portion of Hockmaster's money you can deposite when received.

Respectfully, your friend and obedient servant,

SIMON GRATZ.

(Postmark) Phila., May 26.

Ner Middleswarth, esq., (Beavertown, Union county, P.,) now at Harrisburg.)

PHILADELPHIA, *April* 9, 1839.

NER MIDDLESWARTH, esq.

DEAR SIR: Your favor of the 23d January, advising of your having deposited $200 with Mr. Lesley, came to hand in due course. I have been confined to my house all the winter by indisposition. I am now, thank God, getting better. You will be pleased to collect all moneys you can which are outstanding on account of sales made; and I will be greatly obliged to you to furnish me with a general account of all sales made by you under the two deeds from Mrs. Phillips, showing the tracts, quantity, prices, to whom sold, what payments have been received, and balances due, as early as practicable, and how secured. I think there is one of Mrs. Phillips' deeds in your hands. If so, please forward it to me. Mr. Blanchard claims a fee for suit at Lewistown. I had thought that Mr. Potter had received compensation for himself and Mr. B. How is this?—as I wish to settle these accounts. Have you collected from Frantz the $200? Any thing from Chapman lands? I presume you have not been in Clearfield county. At your convenience be pleased to do as above requested.

Your friend and servant,

SIMON GRATZ.

(Postmarked) Phila., April 10.

Ner Middleswarth, esq., Beavertown, Union county, P.

PHILADELPHIA, *February* 12, 1837.

NER MIDDLESWARTH, esq.

DEAR SIR: Below you have date of deeds to me for the Chapman township lands to enable you to draw the deeds to the purchasers. I have written to Mr. McCoy, and offered him 75 cents per acre for his claim on the tract in possession of Hockmaster, so as to prevent a law suit—not recognising his right, and stating that we have been in possession upwards of 21 years, and at least one-half of the [same] under cultivation, &c. When I get his reply will advise you. I think it probable I shall be in Harrisburg [on] duty a month, and I wish you to have all deeds, &c., prepared and sent to Mr. Lesley. I wrote you a few days since, to which please refer.

Respectfully, yours, &c.,
SIMON GRATZ.

I have a claim amounting to upwards of $2,000, arising out of land sold many years ago in Westmoreland county, and I believe it will be difficult for me to have it placed in proper hands, without going there myself, or sending a special agent. I ask if it would be convenient for you to undertake it for me in the early part of April? Your compensation would be 5 per cent. on amount—say on about 2,400 dollars. This claim arises from sales of lands, and it may be that a resale would be advisable. I supposed that you would not be detained at Greensburg above 3 or 4 days, or a week. Let me have your reply to this.

Deed, John Cummings, sheriff Union county, to Simon Gratz, for tract [of] land, dated Hessen Castle, containing 413 acres 39 perches, dated 14th May, 1832.

Deed do do, called Hickory Bottom, 271 acres 74 perches, 14th May, 1832.

Do do Richland, 416 a., 159, same date.

(Postmark) Feb. 14, Phila.

Ner Middleswarth, esq., Beavertown, Union county.

Endorsed: Circ't c't, U. S., Cohen and al. vs. Gratz and al. Equity.
Read and filed 24th August, 1842.
Commission e. p. def't to Union co.

Afterwards, to wit, on the 30th day of September, 1842, a bill of revivor is filed, in the words following, to wit:

To the honorable the judges of the circuit court of the United States, in and for the third circuit, in the eastern district of Pennsylvania, sitting in equity:

Humbly complaining show unto your honors your orators, Samuel M. Cohen, and Eleazer L. Cohen, citizens of the State of New Jersey, that your orators, on or about the sixteenth day of January, in the year one thousand eight hundred and thirty-nine, exhibited their original bill of complaint in this honorable court, against Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips,

2026

Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachael M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, all citizens of the State of Pennsylvania, thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth; to which said bill, remaining filed of record, they humbly beg leave to refer your honorable court. That Leah Phillips, one of the defendants, departed this life on or about the twentieth day of August, one thousand eight hundred and forty-two; whereupon the said bill and proceedings became abated as to her. That at the time of the decease of the said Leah Phillips she was the sole surviving executrix of the estate of Joseph Simon, deceased, under his last will and testament, a copy of which is appended to the original bill of complaint of your orators. That letters of administration on the estate of the said Leah Phillips were duly granted by the register of wills of the city and county of Philadelphia, to Samuel D. Orrick, a citizen of the State of Pennsylvania; and that letters of administration de bonis non cum testamento annexo, on the estate of the said Joseph Simon, were duly granted by the register of wills of the county of Lancaster, to Joseph Simon Cohen, a citizen of the State of Pennsylvania.

To the end, therefore, that the said suit and proceedings may be revived against the said Samuel D. Orrick and Joseph Simon Cohen, and be in the same plight and condition as the same were in at the time of the death of the said Leah Phillips:

May it please your honors to grant unto your orators the United States' writ of subpœna, directed to the said Samuel D. Orrick, and Joseph Simon Cohen, thereby commanding them, and each of them, on a certain day, and under a certain penalty, therein to be mentioned, to be and appear before this honorable court, then and there to answer the premises, and to show cause, if cause there be, why said suit and proceedings, so abated as to the said Leah Phillips as aforesaid, should not be revived against them, and be in the same plight and condition as the same were at the time of the abatement thereof; and to stand to and abide such order and decree in the premises as this honorable court shall decree, agreeably to equity and good conscience; and your orators will ever pray, &c.

THOMAS A. BUDD,
BENJ. TILGHMAN,
Solicitors for complainants.

Endorsed—No. 1, circ't ct., Apr. S., 1839. Cohen et al. vs. Gratz et al. Equity. Compl's bill of revivor. Issue subpœna in equity, returnable on the 1st Monday of October, 1842.

BENJ. TILGHMAN,
THOMAS A. BUDD,
Solicitors for complainants.

Filed 3d September, 1842.

Report of Master.

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, of November S., 1839.

COHEN et al. vs. GRATZ et al. } No. 1. In equity.

1841. Friday, May 14th. Ordered that it be referred to a master, to take an account of all disbursements made by Joseph Simon, or his executors, or by Michael Gratz, or his administrators, on account of lands held in common by said Simon and Gratz, the title whereto was acquired under or in virtue of a bond and mortgage given by William Trent to David Franks and Joseph Simon.

2. To state whether, in any settlement by suit or otherwise, any account of such disbursements has heretofore been taken or adjusted.

3. That the master take an account of all moneys which were due to Joseph Simon, or his executors, for lands of said Simon, sold by him or them, on which any arrears of purchase money were due in February, 1833; also what amount thereof has since been received by Simon Gratz or his executors.

4. That the master inquire into and state the value of the lands belonging to the estate of Joseph Simon, which were conveyed by Leah Phillips to Simon Gratz, by her deed of 3d April, 1833, together with an account of all disbursements since made by said Gratz or his executors, on account of said lands; of sales made thereof; of purchase money received, of purchase money due, and of all existing securities therefor.

5. That on the application of either party the clerk of this court be authorized and directed to grant rules for taking depositions of witnesses resident in Philadelphia city or county, in the counties of Lancaster or Dauphin, on ten days' notice; also to issue commissions to any other part of this State, or elsewhere, to examine witnesses on interrogatories filed on fifteen days' notice.

6. To examine and report what exhibits annexed to the bill and answers are duly proved, together with the proof thereof; also as to any papers which have been offered or read at the hearing of this cause; and if competent proof has not been made thereof, then to take testimony relating thereto by rule or commission as aforesaid, as the said master shall direct. The court reserves the right of further directions to the master.

And the court appoint Oliver Hopkinson, esq., master, under the above order.

UNITED STATES,
Eastern district of Pennsylvania, set:

I certify the foregoing to be a true and faithful copy of the order made in the above case. Witness my hand and the seal of said [L. S.] court, at Philadelphia, this fifteenth day of May, A. D. 1841,

and in the sixty-fifth year of the independence of the said United States.

FRA. HOPKINSON,
Clerk circuit court.

Circuit court of the United States, Ap. sess., 1839.

COHEN et al.
vs.
GRATZ et al.
} In equity.

To the honorable the judges of the circuit court of the United States, for the eastern district of Pennsylvania:

The undersigned, to whom, as master, the above case was referred, by the annexed order of this honorable court, respectfully reports—

That he entered upon the duty of his appointment on the third day of September, 1841, and has continued in the investigation of the case, at various meetings, between that day and the date of this report.

He has been attended by Messrs. B. Tilghman, T. A. Budd, and J. S. Cohen, esquires, on behalf of the complainants; by W. M. Meredith and W. B. Reed, esquires, on the part of Louisa Gratz, executrix, and Edward Gratz, David Gratz, and Isaac Prince, executors of the last will and testament of Simon Gratz, deceased; by H. J. Williams, esq'r, for Joseph Gratz and Jacob Gratz, administrators of Michael Gratz, deceased; by H. M. Phillips, esq'r, for John Moss and Lyon J. Levy; and by J. S. Cohen, esq'r, representing Sarah M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, Joseph S. Cohen, and Joseph S. Cohen, administrator of Rebecca M. Cohen, deceased. In the prosecution of his duties the master encountered considerable difficulty, from the circumstance that the number of different parties and representatives of deceased parties to the suit prevented, in many instances, any benefit resulting from the assent of one or more to the genuineness of an instrument of writing, or the correctness of an account, as the denial of any one party sufficed to render the strict proof of the paper or document necessary. The death of Simon Gratz, the principal party defendant, before answer filed, appears also to have closed one faithful avenue of evidence that would have certainly thrown much light upon many of the most obscure passages of the case. His purgation upon oath, invited by the bill, or his compelled answers to its searching interrogatories, would have gone far towards the removal of many matters of doubt that clog the case, and perhaps have left but plain questions of law for the decision of the court.

Item 1st. The first item of the order of reference requires the master to take an account of all disbursements made by Joseph Simon or his executors, or by Michael Gratz or his administrators, on account of lands held in common by said Simon and Gratz, the title whereto was acquired under or in virtue of a bond and mortgage given by William Trent to David Franks and Joseph Simon. Upon this subject several calls were made by the complainants upon the defendants, to produce "an account of all disbursements made by Joseph Simon or his execu-

tors, by Michael Gratz or his administrators, on account" of the aforesaid lands. And at a meeting held upon the 28th day of September, 1841, the master was requested to make the following order upon the defendants:

1st. To produce and lodge with the master the books, papers, vouchers, accounts, and documents, referred to in, or necessary for, the investigation of the first, second, and third items of the order of court.

2d. That the executors of Simon Gratz be ordered to produce and lodge with the master all books of account, papers, letters, and documents, whatsoever, going to show what lands or real property were alleged to be conveyed by Leah Phillips to Simon Gratz, by her deed of 3d April, 1833; also any personal property or securities, for the payment of money alleged to have been assigned by the said deed; also, a statement of all sums at any time received for the said lands, or securities, the times when received, and from whom.

3d. That the respondents, or either of them, produce and lodge with the master all books, papers, vouchers, documents, and accounts, belonging or appertaining to the estate of Joseph Simon, deceased.

To these calls the following answers, in substance, were made under oath:

1. Louisa Gratz, Edward Gratz, David Gratz, and Isaac Prince, executors of Simon Gratz, deceased, made answer: That there are no books, papers, vouchers, and documents, such as are referred to in the two first items of the order in their possession, other than those already deposited in court; also, that they have made diligent search for the books and papers referred to in the 3d item of the order, and that none such are in their possession, nor do they believe they ever were.

2. John Moss and Lyon J. Levy severally answer: That they have not in their possession, or control, or custody, or knowledge, any books, papers, vouchers, accounts, or documents, of any kind, whatever, belonging or appertaining to the estate of Joseph Simon, deceased, nor any papers, whatever, connected with, or in any wise material to, this case or the parties.

3. The administrators of Michael Gratz, in answer to said order, filed with the master a certain paper, signed and sworn to by them, which the master annexes to his report, marked A.

No answer to the calls was received from Leah Phillips, although service of notice of the order upon her was duly proved by the affidavit of James Dysdale. The master therefore reports, that he has received no materials for stating the account required.

2d item. The master being required "to state whether, in any settlement, by suit or otherwise, any account of such disbursement has heretofore been taken or adjusted," reports, that so far as has been brought to his knowledge, no such account has heretofore been taken or adjusted.

3d item. The third item of the order calls for "an account of all moneys which were due to Joseph Simon, or his executors, for lands of said Simon, sold by him or them, on which any arrears of purchase

money were due in February, 1833; also, what amount thereof has since been received by Simon Gratz or his executors."

No materials for stating a full and satisfactory account of the moneys due as aforesaid have been obtained; Joseph and Jacob Gratz, administrators of Michael Gratz, deceased, produced and lodged with the master certain papers, numbered from one to six inclusive, purporting to be accounts, or copies of accounts, as follows, viz: No. 1—"Joseph Simon, in account current with Michael Gratz;" No. 2—A certified copy from the register's office of Lancaster county, of the "administration of Bell Cohen, executrix of Joseph Simon; No. 3—"William Trent, deceased, bond and mortgage, to Joseph Simon, Dr.; No. 4—Bernard and Michael Gratz, general account per assignment of David Franks, deceased, with Jos. Simon; No. 6—Mr. Michael Gratz, in account current per assignment of David Franks to B. and M. Gratz, with J. Simon's accepted order." Mr. Williams, on the part of the administrators of Mr. Gratz, asked leave to retain the originals of said papers for their own security; to be produced, however, whenever called for. Mr. Budd, for complainants, objected to the papers being received in evidence. The master ruled out the said papers, as they were not supported by the requisite proof, with the exception of the "administration account of Bell Cohen," which, however, does not appear to have any relation to the matters now inquired of.

As to the arrears of purchase money, due in February, 1833, and the amount of the same, received since then by Simon Gratz, some little evidence has been gleaned from the account annexed, to the answer of Simon Gratz's executors, (paper No. 22,) from the depositions of Ner Middleswarth and of Isaac Fees, and certain letters between Simon Gratz and Ner Middleswarth. Upon this evidence the master reports:

1. On the 9th April, 1834, a verdict for $3,518 $\frac{44}{100}$, was recovered in the matter of a claim by the executors of Joseph Simon, against John Weeks. The suit was conducted for plaintiffs, by Mr. Potter, an attorney employed by Simon Gratz, and was founded upon an agreement made on the 28th May, 1805, between Levi Phillips and Leah Phillips, executors of Joseph Simon, deceased, and the said Weeks, for the purchase of a tract of land (the William Cox tract of 293 acres) for the sum of $2,051. Whether any portion of the amount of this verdict was ever received by Simon Gratz is not known; but it appears by a letter from Ner Middleswarth to Simon Gratz, dated January 7th, 1835, that he obtained possession, for Simon Gratz, of the tract in question (as he had intimated in his letter of April 9th, 1834, would probably be the result of the suit,) and that he had taken from the tenants on the premises instruments of writing, acknowledging themselves to hold under Simon Gratz; sales of the same lands, divided into small portions, were afterwards made to different purchasers, as will appear in a subsequent division of this report.

2. There was a debt due to the executors of Joseph Simon, of $937 $\frac{44}{100}$, being a balance on account of lands sold to Peter Feese; Simon Gratz received, on or about the 27th May, 1834, the sum of $700, and exe-

cuted a deed to Ner Mdidleswarth and Jacob Feese, executors of Jacob Feese, deceased, in trust for the heirs of said deceased, for the one-half part of the Ferguson tract, of 364 $\frac{7}{10}$ acres. This receipt of $700, being in the nature of a compromise, arising out of a sale made as aforesaid by the executors of Joseph Simon, and before the month of February, 1833, the master considers as properly belonging to this item of the reference.

3. By the account annexed to the answer of Simon Gratz's executors, it appears that he received on the 10th October, 1833, the sum of $359 $\frac{11}{100}$, for order of Leah Phillips on Samuel Breck for sales of lands.

These three items are all that the master has been enabled to discover under this head of the reference.

Item 4th. The fourth item of the reference calls upon the master to "inquire into and state the value of the lands belonging to the estate of Joseph Simon, which were conveyed by Leah Phillips to Simon Gratz by her deed of 3d April, 1833, together with an account of all disbursements since made by said Gratz or his executors, on account of said lands or sales made thereof, of purchase money due, and of all existing securities therefor."

The matters now to be investigated, although classed together in the order, require a distinct and separate investigation by the master, owing to the variety of the evidence to be applied to each.

Value of lands in 1833.

1st. The value of lands in 1833. The lands conveyed by the said deed may be classified as follows, viz:

Union county.

$\frac{1}{4}$	of a tract	containing	293	acres,	surveyed to William Coxe.
$\frac{1}{4}$	do.	do.	236 $\frac{3}{10}$	do.	do. to C. Dunagan.
$\frac{1}{4}$	do.	do.	404 $\frac{5}{10}$	do.	do. to Thomas Freet.
$\frac{1}{4}$	do.	do.	364 $\frac{7}{10}$	do.	do. to James Fergusson.
$\frac{1}{4}$	do.	do.	195 $\frac{7}{10}$	do.	do. to James Hunt.
$\frac{1}{4}$	do.	do.	200	do.	do. to Philip Palmer.
$\frac{1}{4}$	do.	do.	143 $\frac{7}{10}$	do.	do. to Samuel Laird.
$\frac{1}{4}$	do.	do.	192 a's & 83 pr's	do.	do. to William Foster.

Juniata county.

$\frac{1}{4}$	do.	do.	165 $\frac{4}{10}$	do.	do. to Daniel Laurence.
$\frac{1}{4}$	do.	do.	314 $\frac{3}{10}$	do.	do. to James Wilkes.

Bedford county.

			Acres.	Perches.		
$\frac{1}{4}$	do.	do.	269	32	do.	to James Dayley.
$\frac{1}{4}$	do.	do.	313	120	do.	to Angus MacPherson.
$\frac{1}{4}$	do.	do.	316		do.	to Alex. Douglass.
$\frac{1}{4}$	do.	do.	283	120	do.	to Thomas Hallowell.

1829.

Columbia county.

One tract containing 177 acres, surveyed to Michael Gratz.
One tract do. 146 do. do. to Levi A. Levi.
One tract do. 200 do. do. to Levi A. Levi.

The complainants' bill alleges the value of said lands to be $15,000 or upwards, and the depositions of several witnesses have been taken on the part of both complainants and defendants upon this point, viz., of

Henry Cosgrove, Mark McLees, Simon Frank, } On part of complainants at Union county, April 22d, 1842.

Ner Middleswarth, Isaac Fees, Peter Goss, Hermann H. Margeritz, John Goss, John Peter, } On part of defendants at Union county, April 16th, 1842.

Peter Wolever, William Hollingshead, Michael Funwald. } On part of complainants at Columbia county, November 26th, 1841.

No depositions were taken on the part of the defendants as to the value of the Columbia lands, and upon the value of the Bedford county lands no depositions were taken on either side.

Union county lands in 1833.

The lands in Union county are all of them situated upon what is called the Black Oak ridge, in Beaver township. The witness, from whose general means of information, as well as from his particular connection with the lands in question, we would expect to derive the most accurate knowledge of their value in 1833, or at any subsequent period, is Ner Middleswarth. He has lived some forty years in that township, and was the authorized agent of Simon Gratz, during a long course of time, for the renting and sale of the lands in question.

In 1833, according to this witness, these lands had upon them no improvements, and were much dilapitated; they were in large tracts, and had been in the hands of poor farmers for a long time. This witness further states, that the value of the lands at that time was from $5 to $8 or $9 per acre, and that they would not have brought that price when sold by him, unless they had been cut up into small tracts to suit purchasers. He states sales made by him for Simon Gratz's account of the same lands from the years 1833, 1834, to 1837. In 1834, he sold a tract of 207 acres and 90 perches for $1,300, being at the rate of about 6\frac{35}{100}$ per acre. In 1835, he sold seven tracts at various prices, from about 5\frac{74}{100}$ per acre, up to $12. These rates would appear to exemplify the truth of the remark made by Mr. Middleswarth, that the prices depended materially upon the size of the tracts sold; for we here find that the highest prices were uniformly obtained for the smallest tracts.

As, for instance, three tracts, one of 12, one of 9, and the other of 22 acres, sold at the rate of $9 per acre each, whilst the tract of 117 acres brought but $6, and that of 112 acres but $5 75 per acre. In the year 1836, he sold six tracts, one of them of 103 acres and 152 perches, for 623\frac{88}{100}$, or about $6 per acre; one of 59 acres and 16 perches, for 354\frac{59}{100}$, or $6 per acre; one of 57 acres 115 perches, for 346$\frac{31}{100}$, or $6 per acre; one of 47 acres 94 perches, for 285\frac{64}{100}$, or $6 per acre; one of 156 acres and 139 perches, for $1,184$\frac{92}{100}$, or $7 per acre; one of 36 acres and 67 perches, for 218\frac{67}{100}$, being $6 per acre.

If these sales were the best that could be obtained of the lands, upon fair publicity given by advertisement or otherwise, so as to invite competition among purchasers, and there be no ground shewn, or presumption raised, to doubt that they brought their fair market value at the times of sale; then, inasmuch as there does not appear to have been any material change in their value during the years 1833, 1834, 1835, and 1836, the master is of opinion that the actual sales made would be the best criterion by which to estimate their value. There are doubtlessly circumstances which should be taken into careful consideration in assuming those sales as the basis of an estimate; it might be that anxiety on the part of Simon Gratz to dispose of so large a body of lands, together with his apparent desire to realize as much cash in hand as possible from the sales, gave a powerful advantage to purchasers in driving bargains with his agent. The hostile claim of the Cohens likewise, as is evidenced by the demand of indemnity bonds, probably exercised a serious and depressing influence upon their marketable value in his hands. These circumstances, however, flowing as they do rather from the "morale" of the main case before the court, than making part of the questions of fact and evidence submitted to the master, he deems it expedient to leave entirely to the judgment of the court.

$7 an acre in 1833.

The master, therefore, reports the value of the Union county lands at seven dollars per acre. The testimony of Mr. Middleswarth was substantially confirmed by all the witnesses, examined on the part of defendants; indeed, the weight of their testimony tends somewhat to reduce the average value as fixed by the master. The testimony of the three witnesses examined on the part of the complainants would establish a much higher average value for the lands, if the said witnesses were qualified to give just opinions upon the subject; but no one professes to have any actual knowledge of the lands in 1833, except Simon Franks, who values them at from $10 to $15 per acre. The purchase made by Henry Cosgrove of 40 acres at $40 per acre in the year 1839, offers no real objection to the weight of testimony for defendants, as it is in proof that there was upon that tract a good tavern stand and a house, circumstances that exercise potent power over the value of the entire tract. There is some considerable discrepancy between the witnesses of the two parties as to what improvements were in the year 1833 upon the lands conveyed by the deed of Leah Phillips. The complainants contend that there were a grist and saw mill upon the tract bought by Mrs. Margeritz, and that

"Fees's tavern" was upon another tract; this assertion is denied by defendants, who allege that these improvements were not upon the tracts purchased by Simon Gratz of Leah Phillips, and the master is of opinion that upon this subject the witnesses for complainants are in error.

Columbia tracts in 1833.

Upon the value of the three tracts in Columbia county, opposite to Catawissa, the defendants have, as has been stated, adduced no evidence. Ner Middleswarth, it is true, states that in 1836 he received an offer of $4 an acre, which he would not accept; this circumstance is too trivial to induce the master to give it any weight in determining the value of these lands, as at most it only proves that $4 dollars an acre was all that the person in question was willing, or, perhaps, able to give, and by no means furnishes even an idea of the market price of the lands; indeed the refusal of Ner Middleswarth (although desirous of selling) to accept the offer, proves, that at any rate that was not the fair value of the lands. We must therefore resort to the testimony of Peter Wolever, William Hollingshead, and Michael Funwald, the three witnesses examined by complainants, for information on the subject.

$20 *an acre in* 1833.

Peter Wolever, a farmer, who has resided 14 years in the neighborhood of Catawissa, and 8 years upon the land itself, estimates the value in 1833 at $20 an acre without buildings. William Hollingshead, a farmer, likewise gives from $25 to $30 an acre as his estimate of their value in 1833. Michael Fanwald, a hatter, is of opinion that in 1833 they were worth $20 per acre. The master, after a careful examination of the reasons given by these witnesses for their opinions, and a proper consideration of their means of knowledge, reports the value of the said three tracts at $20 an acre.

Before leaving this subject, the master deems it proper to state, that it appears by the account heretofore alluded to that, on the 19th May, 1837, Simon Gratz sold the three Catawissa tracts to William G. Hurly and George Frick, for $2,100, or for the price of $4 per acre. There is a wide difference between this contract and the estimate above made; but before the master permits the mere voluntary act of Simon Gratz to refute the oaths of three apparently disinterested witnesses, he feels bound to reflect, whether or not the court will say, that his selling so large a body of land at one sale to a private purchaser, in a bargain made by himself in person for cash in hand, at a time when the pressure in money matters was severely felt in Philadelphia, and when he was more than ever anxious to reap ready money from his estates, sufficiently explains the existence of the discrepancy, and shows an immense sacrifice to have been made.

Aggregate value in 1833.

The master reports the aggregate value of the land in 1833 as follows, viz:

Union county lands, 1,063 acres, at $7	-	$7,441
Columbia county lands, 523 acres, at $20	-	10,460—$17,901

Value in 1841–'42.

The master has inquired into the value of the same lands at the time the depositions of the witnesses were taken, viz., in 1841, 1842. The substance of the testimony is as follows:

Henry Cosgrove says their present value is from $25 to $30, and of some of it $50 per acre. This witness, (who by-the-bye appears to be a species of Caleb Quotem, uniting in his single person the avocations of farmer, and postmaster, and tavern and store-keeper) the master apprehends founds his estimate of the value of these lands too implicitly upon the price he paid for his own 40-acre tract, and therefore the master cannot accompany him in the entire extent of his opinions. Mark McLeese states the value at about $25 per acre; Simon Frank rates them at $20 to $25.

Union county lands in '41–'42.

Ner Middleswarth estimates their value, in 1842, at from $10 to $12. Isaac Feese rates them at from $8 to 10 and $12, as to the improved land; but that the unimproved was not worth more than in 1833. This witness, however, states, that the land bought by Daniel Koch, of Ner Middleswarth, of about 47 acres, (Koch paid 285\frac{42}{100}$, or $6 an acre, for it in November, 1836,) was offered to the witness for $700, with stuff upon it ready to build. This price, about $15 per acre, the witness thought too dear. This incident is mentioned by the master, either as showing the great increase in value which at least Daniel Koch apprehended had accrued to his land since 1836, or else the cheapness of the price at which he purchased. All the other witnesses for defendants estimate the lands, in 1842, at from $8 to $10 and $12 per acre. The master reports the value of the Union county lands, in 1841–'42, at $12 per acre. In forming this estimate, he has paid more deference to the witnesses of complainants than before, as they had the same opportunities of forming opinions of the value, at this date, as had those of the defendants.

Columbia county lands in 1841.

The master reports the Columbia county tracts as worth $25 per acre in 1841.

Aggregate value in 1841–'42.

The master reports the aggregate value of the lands, in 1841–'42, as follows, viz:

Union county lands, 1,063 acres, at $12 - - - -	$12,756
Columbia county lands, 523, acres, at $25 - - - -	13,075
	$25,831

Disbursements.

With reference to the part of the order, requiring an account of all disbursements made since 3d April, 1833, by Simon Gratz, or his ex-

ecutors, on account of said lands, the master reports, that no evidence has been presented except that which is contained in the account annexed to the answer of Simon Gratz's executors, and in the deposition of Ner Middleswarth, and the letters between Gratz and Middleswarth. The two latter sources of information are, however, so imperfect, indefinite, and unsatisfactory, that the master has not deemed it safe to resort to them for assistance. A certain paper, purporting to be an account rendered to Simon Gratz by Ner Middleswarth, containing the amount of sales and expenditures, and of moneys paid over to Simon Gratz, on account of the said lands, by Ner Middleswarth, not being duly vouched or proved by the oath of Ner Middleswarth, or admitted by complainants, was shut out by the master; although, if correct, it would have gone far to enable him to fulfil this portion of his duties.

The account annexed to the answer aforesaid is, then, the only vehicle of information upon this subject; and as no question of fact has been raised upon the account generally, or any of its items, it would be an act of supererogation in the matter to enter upon speculations as to the justice of the account, or any of its credits, as a matter of law or equity. This the court can as well decide, with the account before them, without as with the opinions of the master.

Sales made.

The master reports that the following sales of the said lands were made:

By Ner Middleswarth for Simon Gratz.

1384.	To Henry Goss and Henry Ritter, 200 acres—P. Palmer tract, for - - - - - - -	$1300 00
Do.	To John Weider, 404¾ acres—the Freet tract, half of this belonged to Mr. Breck, for - - - -	2200 00

William Cox tract.

1835.	Charlotte Margeritz, 117 acres 122 perches, for -	706 57
Do.	Isaac Gearhart, 33 acres 90 perches, for - -	293 68
Do.	David Fessler, 12 acres 74 perches, for - -	109 03
Do.	Adam Boker, 9 acres 107 perches, for - -	84 87
Do.	Daniel Price, 24 acres 149 perches, for - -	149 58
Do.	Nicholas Reitz, 22 acres 73 perches, for - -	190 87
Do.	John Lair, 112 acres 12 perches, for - -	672 75

James Hunt tract.

1836.	George Katey, 103 acres 152 perches, for - -	623 68
Do.	John Boker, 59 acres 16 perches, for - -	354 59
Do.	Jacob Speglemeyer, 57 acres 115 perches, for -	346 31
Do.	Daniel Kock, 47 acres 94 perches, for - -	285 52

Ch. Dunagan tract.

Do.	George Ritter, 156 acres 139 perches, for - -	1184 95
Do.	Jacob Stumpff, 36 acres 67 perches, for - -	218 51

By Simon Gratz, in person.

1836.	To James Robb, 2 tracts in name of D. Laurance and James Wilkes, of 165 $\frac{A}{16}$ and 314 $\frac{7}{16}$ acres -	2400 00
1837.	To W. G. Hurley and G. A. Frick, 3 tracts in Columbia county, 177 acres, M. Gratz; 148 acres, L. A. Levy; 200 acres, L. A. Levy - - -	2100 00
1834.	To E. J. Anderson, $\frac{1}{4}$ of 4 tracts of land in Bedford county: 269 acres 32 perches, Jas. Daily; 213 acres 20 perches, A. McPherson; 216 acres, A. Douglass; 283 acres 100 perches, J. Hallowell - -	246 20

Purchase money received.

The master reports that the only method of ascertaining the amount of purchase money received by Simon Gratz for lands sold since the 3d April, 1833, is that of resorting to the aforesaid account, which comes down as far as the 27th June, 1839.

The gross amount of receipts is - - - -		$10,622 58
From which deduct amount sent G. Knapp et al.	$20 50	
Order of Leah Phillips - - - -	359 11	
N. Middleswarth and Feese - - -	700 00	1079 61
Pur. money rec. of sales since 3d April, 1833 - -		$9542 97

Balance due and securities.

No means have been furnished to the master by which he can report the exact amount of purchase money due, or of the existing securities therefor. As he has no satisfactory evidence as to what allowances were made by Simon Gratz to purchasers, on account of unforseen expenses incurred by them, such as patenting, &c. If these are to be disregarded, the above receipts, together with the amounts of consideration money of the sales already given by the master, supply a ready method of ascertaining the answer to the question.

Item 6th.—Proof of exhibits, &c.

The sixth item of the order requires the master to examine and report.

1st. What exhibits annexed to the bill are duly proved, together with the proof thereof.

2d. What exhibits annexed to the answers are duly proved, together with the proof thereof.

3d. As to the proof of any papers that have been offered, or read at the hearing of this cause, and if competent proof has not been made thereof, to take testimony, &c., &c.

Before entering upon the details of this portion of the matters referred to him, the master inserts the following interlocutory orders, which were made by the court as rules to regulate him in regard to at least a part of the documents and papers upon which he was called upon to act. The court instructed him that—

lent Mr. Levy Phillips 500 dollars to carry on those suits, and I think Mr. Joseph S. Cohen has the money; and another day there was 200 dollars to pay the rent. Mr. Cohen lived in Fourth street.

Was not the plate of Mr. Levy Phillips placed in the hands of Mr. Isaac Phillips to secure the payment of the sums borrowed from him?

Answer. I think it was placed there to keep it from you, Joseph S. Cohen, who would have taken the nose off. I don't think that you, Joseph S. Cohen, have any right to ask me any questions; any more nonsense.

Question. Do you or do you not know whether the plate of Mrs. Leah Phillips was or was not placed in the hands of Isaac Phillips, son-in-law of this deponent?

Answer. I will not answer you, Joseph S. Cohen.

Question. Who has the possession of that plate just now?

Answer. You had better inquire.

Question. Did you or not tell Mr. Cooper, when he served the subpœna on you, that you would not attend; that you did not care a damn for him, Cooper, or any of them?

Answer. I will not answer you a question. I will answer Mr. Budd, or Mr. Kittera, any think they ask me.

J. MOSS.

Sworn to and subscribed, 13th June, A. D. 1833, before me,
M. W. ASH, *Alderman*.

John Purdon, esq., being present, and called on by me as a witness, and the book tendered to him to swear, says:

That he declines being sworn as a witness in the matter. At the same time, Mr. Purdon requests the subscriber to reduce to writing the reasons for declining to be sworn as a witness.

The attorney on behalf of the citation objects to any statement of Mr. Purdon's being reduced to writing, unless he be a witness regularly sworn in the cause; after this the alderman thinks it proper to reduce to writing this much of Mr. Purdon's reasons:

I have no knowledge of Mrs. Phillips, or of any of her acts and doings, except as I have obtained that knowledge from my client, Mr. Simon Gratz. I never saw Mrs. Phillips, and have no paper in my possession that ever was in her possession, to my knowledge; I decline, therefore, being sworn as a witness; the only knowledge I have of the matter being communicated from Mr. Gratz, my client, to myself. The counsel on behalf of the citation insist upon Mr. Purdon's being sworn as a witness, in order that he shall answer all such questions propounded to him as do not interfere with his privilege as an attorney or counsellor. Mr. Purdon declines again being sworn as a witness on the subscriber tendering him the book for that purpose, unless the question is previously propounded; to which he will answer, if it does not conflict with his privilege. And the subscriber objects to that course.

June 13, 1833. MICHAEL W. ASH, *Alderman*.

Lyon J. Levy being called, came, and was duly sworn to tell the truth, the whole truth, and nothing but the truth, states:

I do know of an arrangement or agreement made between Leah Phillips, surviving executrix of the estate of Joseph Simon and Simon Gratz. That agreement was in writing. I cannot tell the date without referring to it. I have the agreement. Agreement produced, dated 13th February, 1833, and is in these words:

Acts to be performed by Mrs. Leah Phillips, surviving executrix of Joseph Simon, deceased:

1st. To execute deed for Michael Gratz's interest in unsold lands.

2d. To direct her attorney in suit (in court of common pleas of Lancaster county, of January term, 1822. No. 163.

Simon Gratz, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased,
vs.
Levi Phillips, Leah Phillips, and Beliah Cohen, executors of Joseph Simon, deceased.

Amicable action, August 10, 1822. Award of referees in favor of plaintiffs for $2,967 34.

Exceptions filed to report to bring up the case on agreement, then permit the exceptions to be overruled, and the award affirmed.

3. To settle the sum due on sale of house and lots in Carlisle in judgment in supreme court, which shall be submitted to the auditors to report thereon.

4. The said Leah Phillips, Levi Phillips, and Beliah Cohen, executors of Joseph Simon, deceased. In the court of Lancaster county, September term, 1828, No. 2, vs. Simon Gratz, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased. Mrs. Phillips and her attorney to direct discontinuance of this action.

5th. To transfer all her interest in the estate of Joseph Simon to Simon Gratz, for the sum of ($, blank, this to be fixed,) if the product of this shall produce a sum exceeding the amount of the above judgments, and the sum to be paid as a consideration, then the excess to be paid over to Mrs. Leah Phillips. The blank to be filled up with fifteen hundred dollars, five hundred dollars in hand, five hundred in one year, and five hundred in two years.

February 13, 1833. S. GRATZ.

Lyon J. Levy, continued.

I did not see the agreement written, and therefore cannot say whose writing it is. The date and signature is in Mr. Gratz's handwriting. There was no other agreement made between Mr. Gratz and Mrs. Phillips that I know of. I do not know when Mrs. Cohen died. I may have called on Mr. Gratz previously to first January last, and probably did; but I cannot say. I don't know that I did or did not call on Mr. Gratz during the summer of 1832 about this negotiation. I never saw Mr. Joseph Gratz or Mr. Jacob Gratz in relation to it. I

never informed Mrs. Bell Cohen in her lifetime, nor any of her children since her death, of this negotiation going on. I don't know that Mr. Gratz visited Mrs. Phillips. I have heard Mrs. L. Phillips say, Mr. Gratz called on her; can't say when that was; can't say whether it was before last January. Mrs. Phillips did not say what he called for. I believe I called on Mr. Gratz at the request of Mrs. Phillips, stating to him her wish; cannot state the precise time, but know it was before this agreement; thinks it was in the fall of 1832, intimating to him her wish that he should purchase her interest in the lands she was interested in of her father's estate. I do not remember what Mr. Gratz's exact reply was; and I called again at a subsequent period, which resulted, on his part, what you see on that paper—meaning the agreement above referred to. I considered this her interest to abide by this agreement, and advised her to do so. Mrs. Phillips made no objection to the agreement, to agreeing to it. She asked my opinion about it; can't say in what words, but I do recollect that she asked me. I think she asked my opinion. She at that time said nothing about the interest of her sister Cohen's children in the estate of her father. I had not at that time read the will of Joseph Simon, and I know nothing of its provisions. I know nothing of the amount or value of the estate he left. I had not inquired into the nature of the claims of Simon Gratz and his family. I know personally all the children of Mrs. Cohen, deceased. I have been at her house twice. I did not, during this negotiation, mention any thing of this matter to any of those children. I was not advised by Mrs. Phillips or by Mr. Gratz to keep this thing quiet. I am related to Mrs. Phillips. Mrs. Phillips' husband was the uncle of my wife's mother. I know nothing of the suits mentioned in the above agreement. I have had papers put into my possession by Mrs. Phillips for Mr. Gratz to select from, to carry the spirit of the agreement into effect. I was present when he examined them at my room. Mr. Gratz took some papers away with him. I have no list of the papers that were put into my hands. I cannot say that Mrs. Phillips is blind and cannot read papers. I believe her sight is very bad. I have seen her write her name and distinguish colors.

She did not read any of the papers signed by her to which I was a witness. I read them to her, in the presence of her servant Mary, aloud. I presume it was at her own suggestion. I do not know that it was introduced into the power of attorney that they were executed at the recommendation of John Moss and myself. The papers delivered to me by Mrs. Phillips for Mr. Gratz were in a trunk. The trunk was about 2½ feet long, and the usual heighth and breadth of such trunks. It was filled with papers. They were tied up—some of them in bundles, and endorsed. They were parchment deeds. One in particular I noted, as having been signed by some Indians. I don't know that any one was present when I received them. I do not recollect whether they were sent to me. I do recollect now that I sent for them; I may have advised Mr. Gratz the next day that I had received them. I think I called on Mr. Gratz to call at my house, when it suited his convenience, to look at the papers. Mr. Gratz, soon after, did call on

me. When he called I opened the trunk on the table, and allowed him to examine them. I remained in the room with him during the examination. Mrs. Levy may have called into the room occasionally, (my wife.) The examination took about half an hour. Mr. Gratz took a list of them. Among them was a mass of private letters, which Mr. Gratz put aside. Mr. Gratz selected and took away such papers with him as he thought proper. The rest of the *the* papers—the best part of them—I returned to Mrs. Phillips. Some part of them may be at my house. The trunk, I presume, is at my house still. Mr. Gratz gave no receipt for the papers he took away. I did not ask one. Do not know what papers he did take away. My impression is, but I cannot say for certain, that the examination of the papers was previously to executing the power of attorney. I was authorized by Mrs. Phillips to deliver those papers to Mr. Gratz. She may have said that the trunk contained all the papers relating to her father's estate. Don't remember that she said so. She did not tell me for what purpose she delivered those papers to Mr. Gratz. I saw the papers once since they were delivered to Mr. Gratz, but can't say they were the papers; but Mr. Gratz returned me some papers that were useless. I believe I returned them to Mrs. Phillips. I hold the papers now in my possession, by the authority of Mrs. Phillips; having received them from her. I presumed that by her authority I hold them. Since I was subpœned here, I told Mr. Gratz that I was subpœned. It was at my own house that I told him so. I asked Mr. Gratz whether he thought it would be necessary that I should bring this agreement with me. He said he thought I had better put it in my pocket. This is all that passed. He did not tell me not to produce the agreement referred to. I believe I asked him whether he knew whether it would be necessary for me to go to Lancaster. He said, I believe, that he did not know; nothing said by Mr. Gratz about my expenses being paid to Lancaster. I have seen Mrs. Phillips since I was subpœned to attend here; at her own house, to-day, before I came here. Also saw her there yesterday. Saw Mr. Gratz there to day. Mr. Gratz was writing when I came in. Mrs. Phillips was not in the room; was in the house. I did not wish to disturb Mr. Gratz, and called the old lady out to speak with her. Saw nobody else at Mrs. Phillips' but Mr. Gratz. I did not notice that there were any other papers except those Mr. Gratz was writing. Mrs. Phillips sent for me to call at her house to-day. Yesterday I went with Mr. Reed, at his request, to Mrs. Phillips'. I believe I have seen a letter from Mr. Benj. Tilghman to Mrs. Phillips, requesting certain papers to be used in a cause at Lancaster. Mr. John Moss got that letter, and conveyed it to Mr. Reed. I do not know who employed Mr. Reed. Mrs. Phillips told me that she had employed Mr. Reed as her attorney. I do not know that Mr. Reed had been employed by Mrs. Phillips before the agreement.

Being cross examined by Mr. Reed, states: I have heard Mrs. Phillips express her utter want of confidence in Mr. J. S. Cohen to act as her attorney—not for want of integrity, but want of knowledge, on account of incapacity. I have heard her speak of Mr. Cohen's unkind treat-

ment to her since her husband's death. I never heard her say that the Messrs. Cohens had improperly obtained papers from her. I heard her state that, since her husband's death, *that* Mr. J. S. Cohen had taken such papers as he wanted for conducting some suits or arbitrations; that Mr. Cohen had stated that some arbitrations were coming on, and that he must have some papers, and that he had taken them. She spoke of suits and arbitrations. I heard her say that books and papers belonging to the estate of Joseph Simon were left in the house in Fourth street with Mr. J. S. Cohen. I heard her say that Mr. Cohen was indebted to her husband. She showed me a statement of either eleven thousand or fourteen thousand in Mr. Levy Phillips' handwriting. I think $14,000 and upwards, and that they had frequently applied to Mr. J. S. Cohen for an account which they may have had against Mr. Phillips, but never could get an account or any satisfaction. She said that Jos. S. Cohen said to her that there was no use in his giving any account, as he had no money to pay her, nor she any to pay him; and therefore there was no use in giving an account—something to that substance. I heard her say that Jos. S. Cohen and one of the other brothers had abused her—made use of very unkind language to her, and hurt her feelings very much; and somebody led her out of the room, when they had acted in that manner toward her. It was since Mrs. Cohen heard *heard* that there was some negotiation going on with Mr. Gratz. I think I understood her to say that one of the Miss Cohens was spending the day with her, or some time with her, and that while Miss Cohen was there, Mr. Simon Gratz, by her request previously, had called on her—that is, that she had sent for Mr. Gratz to call and see her, and that Mr. Gratz had called while Miss Cohen was there; that Miss Cohen left her, and shortly after Mr. Joseph S. Cohen called, making use of very unkind and unfeeling language. It was a bad remark, relating to Mr. Gratz—either a villain or a rascal should pass the threshhold of the door through which her husband had been carried out of in his coffin; and stormed and raved and made a terrible to-do there. Mrs. Phillips is in the perfect possession of her faculties. I consider her a very shrewd woman—a very smart woman.

Being called again in chief states, I have heard Mrs. Phillips mention these matters relating to Mr. Cohen often; it had been her theme; I heard her mention it yesterday, she mentioned these things which I have stated in the presence of Mr. Reed; I never heard her speak in unkind terms of Mr. Joseph Cohen until this arrangement was entered into; have heard her speak of Mr. Cohen's incapacity, and heard Mrs. Phillips complain that in following Mr. Cohen's advice, they had been placed in very awkward predicaments, and heard her complain a very short time after her husband's decease, that one of the Mr. Cohens, it was not Mr. Joseph S. Cohen, had called on her and insisted on her endorsing or accepting a note, or putting her name to a note, for the purpose of retiring a note which her husband had accepted for the Mr. Cohens, which had been running a very long time, and renewed, and something paid off every 60 days, and that

unless she done this she would be sued; she spoke frequently of the indorsement of this note previously to the arrangement taking place; never before this arrangement heard Mr. Levy Phillips nor Mrs. Leah Phillips speak in unkind terms of Mr. Simon Gratz. The witness desires to add, Mr. Simon Gratz stated that some papers that he wanted were not there after the examination of the trunk, and stated they were title deeds, &c.; on my inquiring of Mrs. Phillips, she stated that she had searched the house from top to bottom, and that she had sent all the papers she had, and if any more were wanting, Mr. J. S. Cohen must have them, as he had access to them at all times. The reason why I did not take a list of the papers that Mr. Gratz took, was because I had the highest confidence in the honor and integrity of Mr. Gratz, and did not think that he would do any thing but what was correct and honorable.

LYON JOSEPH LEVY.

Sworn to and subscribed this 13 June, 1833, before me,
MICHAEL W. ASH, *Alderman*.

The further hearing of witnesses continued to 10 o'clock to-morrow morning, the 14th June, instant.

JUNE 14th, 1833.

CITY OF PHILADELPHIA, *ss*.

On the conclusion of Mr. Levy's deposition, the counsel for the citation having stated that they closed their testimony, Mr. Simon Gratz having been subpœned on the part of the citation, Mr. Purdon attending as his counsel, insisted upon his being examined as a witness. Mr. Reed, who attended as counsel for Mrs. Phillips, also insisted upon the examination of Mr. Gratz. The counsel for the citation objected. The alderman decided that, upon the rule exhibited to him, it was competent for either party to examine such witnesses as they thought proper, and accordingly Mr. Gratz, upon the application of the counsel of Mrs. Phillips, was sworn as a witness on her behalf. The counsel for the citation object to the competency of Mr. Gratz as a witness.

MICHAEL W. ASH, *Alderman*.

Simon Gratz being called, comes, and is sworn to tell the truth, the whole truth, and nothing but the truth; after which Mr. Purdon offers Mr. Gratz to the counsel for the citation as a witness to be examined. Mr. Reed joins in the offer. The counsel for the citation decline making a reply to this proposition; after which Mr. Gratz states:

Soon after the death of Levy Phillips, his nephew, Isaac Phillips, he who had formerly resided at Lancaster in the family of Joseph Simon, my grandfather, called on me, as he said at the instance of Mrs. Leah Phillips, with a request that I would not at that time urge on the trial before auditors on the account render suit. I stated that I was anxious to have this disposed of with a view to the settlement of my father's estate, but that I would not press it until Mrs. Phillips found it convenient to attend. In August or September last, I cannot

tell which, I was out of town in August, Mr. Isaac Phillips said that then his aunt could not expect further delay if I desired to call the auditors together. Some time after this, Isaac Phillips, esq., son-in-law of John Moss, also a nephew of Levy Phillips, called on me at my counting house, and inquired if I was disposed to purchase from her her lands, and asked me to make her a proposal for them. I stated that I would make no offer, but if a proposition came from Mrs. Phillips I would make an answer. After this conversation I had no conversation with any body until the period I shall next name. On the 31st October, 1832, I received a note from Mrs. Phillips, which I will read, as follows:

"SIMON GRATZ, esq.

Will you allow me the favor to [see] you in the morning, say 12 o'clock.

(Signed) LEAH PHILLIPS.

"October 31, 1832."

I called on Mrs. Phillips, who was engaged with Miss Cohen, stayed a short time and retired, and left Miss Cohen there. I had no communication with Mrs. Phillips until a subsequent period, which I shall name. On the 7th December, I received a note in these words, to wit: "Mrs. L. Phillips' compliments to Mr. S. Gratz, would wish to know at what hour this day it would be convenient to see her at his counting house." Dated Friday morning, 7 December, 1832. Mrs. Phillips came in the course of the morning to the counting house; said she wished to sell the lands belonging to her father's estate, and was desirous to have the suits settled. She inquired what I would do. In reply I said that I could make no proposition to her, or enter into any treaty with her; that I was ignorant of the value of these lands, but that if she desired to sell the lands, or to do any thing in relation to the suits, and would consult with her friends, I would be prepared to reply to any proposition made to me. I recommended to her that she and her friends should consult Zeligman Phillips, late counsel to her deceased husband, or any other person whom I supposed was quite conversant in the matter. Mrs. Phillips remarked that she had friends, men of business, in whom she had confidence, and with whom she would consult. She made an observation that her dear Mr. Phillips had frequently told Joseph S. Cohen in her presence, that in relation to a suit brought in Lancaster against the Gratzes to recover back moneys which they had received on a judgment in an account render suit in the supreme court at Philadelphia, that it was folly to throw away any more money to the lawyers, as there was no hope or chance of a recovery, and that he would not expend any more about it; that the sum Gratzes recovered was their share for lands received for Trent's debt, and that he had no expectation or hopes from the suit; that he should not pay any more money for expenses on this account. Shortly after this conversation, I met Mr. John Moss in the street; he said that Mrs. Phillips had conversed with him on her affairs, as also with Mr. L. J. Levy; that Mrs. Phillips wished to sell her lands; we then, Mr. Moss

and myself, walked up Chestnut street to Mr. Levy's store, and he introduced me to Mr. Levy, with whom I had no previous acquaintance. Mr. Levy inquired of me whether I felt disposed to purchase of Mrs. Phillips the lands, and asked me to name a price. To that inquiry I made no reply. He proposed to call on me at my counting house at some future time. In the month of February, 1833, probably about the 10th or 12th, Mr. Levy called on me. I then stated to him that I had no objection to purchase from Mrs. Phillips the lands, but that I was unacquainted with their precise value. I then handed to him the paper he produced yesterday, the price in blank, (the paper produced here yesterday.) On the 13th February I was in Mr. Levy's store, and he requested me to fix the price or sum that I would give for Mrs. Phillips' interest in her father's estate. He then handed the paper to me, and the sum of fifteen hundred dollars was inserted, and I signed the paper referred to. Mr. Levy then said he would send to Mrs. Phillips for papers. It might have been on that day, and might have been on a day or two subsequent. After which Mr. Levy informed me that he had received a trunk of papers, and requested me to examine them with him. We went up stairs in his back room; he opened a trunk of papers and remained with me. I examined the papers, and I selected such as bore upon the lands concerned, and selected such papers from them as I have a list of now in my hands, in these words, to wit:

List of letters delivered by Mrs. Leah Phillips.

Account Ephraim Blaine with Joseph Simon, dated April, 1793.

Cancelled deed, Levy Phillips and Beliah Cohen.

Joseph S. Cohen for two tracts of lands in Turbot township, Northumberland county.

Deed, Martin Withington to Joseph Simon, for 2 tracts of land, Turbot township, 7th July, 1789; patent, L. Andrew Levy, 2 tracts land 177, 148 acres, No. 16, Northumberland county.

Ditto ditto for 200 acres, No. 15.

Patent, Jos. Simon for a tract of land, 322 acres, called Desolation, No. 302.

Jas. Hamilton, esq., to Jos. Simon, lease for lot, No. 165.

Patent to Jno. F. Mifflin for tract of land, in name of Thomas Freet.

Deed, Martin Withington to Jos. Simon, for ten tracts of land, estate of William Trent.

Ditto do. for one tract Henry Ayres.

Ditto do. for one tract Samuel Laird.

Solo. Eting and wife, deed for tract, name P. Palmer.

Ditto do. Samuel Laird tract land.

John Davis and wife to Mathew McConnell, for two tracts of land, in name of James Wilkes and Danl. Lawrence.

2 patents, Matthew McConnell, for same.

Deed, Math'w McConnell to Patrick Garvey and Mary McAlister, (endorsed a conveyance to George Moore.)

Deed from Moore and wife to Jos. Simon.
Release, Epinelas Hart to Jos. Simon.
Mortgage, Wm. Trent to David Franks and Jos. Simon.
Bond, same to same.
Copy conveyance, Jas. Hunt to Wm. Coxe.
Conveyance, Daniel Lawrence to Wm. Trent.
Engagement, David Franks and Jeremiah Warder to Wm. Trent and George Croghan.
Several drafts of surveys for Middle Creek lands.
Lease, Jas. Hamilton to John Garner.
Lease, Thomas Cuxin to Inricus and Joseph Simon.
Lease, Jas. Hamilton to Morris Bond.
Letter of atty., And'w Levy to Joseph Simon.
Lease, Wm. Steen to Jos. Simon.
Deed, Leah Phillips and Beliah Cohen to Wm. Steen and Jno. Steen, for lands in Hemlock township, Northumberland county.
Drafts of the lands.

I stated to Mr. Levy at the time, that there were other papers not in the trunk nor in the list, and probably could be found. He sent me some papers, or perhaps I called at his house, and made a re-examination—that is the fact—and took from him a letter from Mr. Breck, relating to the joint lands on Middle creek, and articles of agreement between Jos. Simon and Harmon and Sheldon. You now have a list of all the papers I got from Mr. Levy or Mrs. Phillips, I having returned one. I returned to Mr. Levy patent to Jos. Simon for one tract of land, 322 acres, called Desolation, being one of the patents comprised in the list aforesaid. I wrote a letter to Mrs. Phillips on the 29th April, 1833, in the Lancaster, 29th April, 1833. I might state that I have received deeds from Mrs. Phillips for these lands, as I wish these gentlemen to be informed fully and truly of every step I have taken in relation to my purchase of Mrs. Phillips, so that if any advantage is to arise to them, at the court in Lancaster, they may have the full advantage of it. I will now go on to state the deeds I have received.

Deed, Leah Phillips, executrix, to Simon Gratz for lands in Union, Juniata, and Bedford counties, Pennsylvania; this deed is recorded; date of deed 24th of April, 1833; witnesses, John G. Thompson, And'w Pettit; consideration of $1,000, (dollars;) I hold this deed in trust for my father's estate, for which I paid her 1,000 dollars, or passed a receipt for that sum to her on account of my father. The property contained in this deed was held by the executors of Joseph Simon, as trustees under the will of Joseph Simon, for my father's use; and also under a declaration of trust from Jos. Simon. I therefore passed to Mrs. Phillips a receipt that she might not be charged in her administration accounts with the trust money belonging to Michael Gratz. Then I received another deed from Leah Phillips, sole surviving executrix, to Simon Gratz, dated 3d April, 1833; consideration 1500 dollars; recorded in Union county deed book H, page 160; and recorded also in Columbia county, in deed book F, page 371, 373, on the 24th May,

1833; another deed to me from Leah Phillips, now in the recorder's office in Lancaster county, for lots in Lancaster.

The letter written by me to Mrs. Phillips, a copy, in the words following, to wit:

Mrs. Leah Phillips, Philadelphia, dated 29th April, 1833. On my arrival at this place I procured a copy of a paper now enclosed. On this subject, as you are really the only proper person to close the affairs of your father's estate, and as Joseph S. Cohen would be a very improper one, the present application to have you removed ought to be resisted effectually. I advise you to consult with your attorney, Mr. Wm. B. Reed, and get him to address a letter to your attorney, Mr. B. Champneys, directing him to use all measures here to prevent the success of Mr. Jos. S. Cohen's application; also request Mr. Champneys to give his opinion of the probable result of this application. I have requested Mr. Emanuel C. Reigart to draw a deed from you to me for the Lancaster lots; this will be sent you; you will be pleased to execute the deed and acknowledge it.

The counsel for the citation reserving all legal exceptions to the competency of the witness as to the matter of his testimony, proceed to cross-examine.

I have not read my examination thus far from a written paper. The testimony that I was to give was reduced to writing before I came here; it was reduced to writing yesterday morning, and the only reason I reduced it to writing was to be accurate about dates; I believe no person saw it after it was reduced to writing but myself; I had that paper open before me when I testified; I did not read any part of that paper in giving in my testimony; I did not make use of the same words; I am not willing to have that paper handed to the alderman to annex to the depositions.

Question by T. Kittera, esq., to Mr. Gratz. Are you willing to hand to the alderman, in order to be attached to this deposition, the paper which was before you during your examination?

Answer. That the paper I had before me was my notes of the transactions as they occurred, referring to dates, and having given full testimony on all the facts as they occured in point of time, and these notes I drew up yesterday morning, I decline having it attached to this deposition; I never before in that paper put down any thing Mrs. Phillips said to me about this business; I did not see her often; I may have seen her five or six times since October. When I first called on Mrs. Phillips, I knocked at the door; met Mrs. Phillips at the door, and said I had called in consequence of her note at her request; she said she had company, but asked me to walk in; *but* insisted upon my going in; she did not say who was with her; I walked in, Mrs. Phillips pointing to a seat; Miss Cohen, who was sitting by the bulk head, at that instant caught my eye; I saluted Miss Cohen, who with a great deal of hauteur bowed her head, and I took my seat; I remained five or six or perhaps ten minutes, and then bid the ladies good morning; it was Miss Elkalah Cohen; she is one of the children of Mrs. Bell Cohen; I had no conversation excepting common subjects, such as the weather, &c., with Mrs. Phillips.

Question by Mr. Cohen. Did you communicate to Mrs. Cohen in her lifetime that a negotiation was pending between you and Mrs. Phillips in relation to the estate of Jos. Simon, or any part thereof?

Answer. I had no communication with Mrs. B. Cohen for many years, and therefore made no communication to her, and have had no negotiation with Mrs. Phillips, or any person on her behalf, or with any other person, but as already stated in the former part of this deposition; I drew up the agreement produced by Mr. Levy yesterday; Mr. Isaac Prince copied it from the one I produced; he is in my counting-house.

Question. Did you consult Joseph Gratz, Jacob Gratz, or either of them, (co-administrators of Michael Gratz,) in relation to the agreement with Mrs. Phillips?

Answer. I did not consult any person. I have seen powers of attorney to Mr. Champneys for the suits at Lancaster, and have copies of them. I do not know in whose handwriting those powers of attorney are. I have no recollection of having seen the powers of attorney before they went to Lancaster. I may have seen them. I do not know who sent them to Mr. Champneys. I know not who drew up the forms of the powers of attorney, nor who sent them to Mr. Champneys. I do not recollect as to those powers of attorney; that was Mrs. Phillips' concern, not mine. I have no recollection who drew them up, or who sent them. I think I had not seen those powers before they were executed, as it was no concern of mine. I did not charge my memory with them, and therefore cannot answer otherwise than I have. I cannot answer positively whether those powers of attorney were submitted for my approbation previous to their being executed. I have no recollection, and it is possible I may have seen them. I have no recollection of being informed of the application at Lancaster to the court of common pleas, of having the children of Bell Cohen placed on the record as parties to the suit, until about the eighth day of April last, when I was at Lancaster. If I had any previous information, it must have been by letter received from Lancaster. I don't recollect that I did receive any letters. I was at Lancaster on the opening of the circuit court. I was present at the discussion of the case of Simon's executors against Gratz's administrators, on that day. I had previously given to Mr. Purdon directions to bring on the auditors of account render. I recollect now what did exactly pass after my return; Mr. Purdon told me that it had not come on, and I requested him to bring it on as soon as possible. I have in my possession an account stated by Mrs. Phillips in relation to the matters. This is it. The body of the paper, with the exception of the signature, is in the handwriting of Mr. Purdon. I have seen Mr. Bevan frequently within four or five years in relation to this auditorship.

Question. Have you lately seen Mr. Bevan, and informed him that the matter before the auditors would be settled?

Answer. After Mrs. Phillips had given me an account of the moneys received from Ephraim Blaine, the same account which is noticed in

the list of papers, Mr. Bevan and myself met at the corner of Ninth and Market streets. He was going home to his dinner, and I was going for my horse. I told him that I had now in my possession an account of the money received on the bond in the suit in which he was an auditor, the production of which was frequently called for by me and my attorney, and denied by the executors of Joseph Simon, which appeared to be the only obstacle to the settlement of their award. The difficulty being now removed, the auditors would have little trouble in making up their report. This is precisely the conversation which passed between Mr. Bevan and myself. The account in the paper in the handwriting of Purdon is taken from an account, not from the account delivered to me from Mrs. Phillips.

Question. Did you not mention, in terms, to Mr. Bevan that you had settled the matter before the auditors, and they would be called together, for form's sake, to give a legal sanction to it?

[Answer.] I did not. I stated to Mr. Bevan that the difficulty in ascertaining the amount due was set aside by being in possession of the evidences of the times when the moneys were paid on the bond. All the papers from which this paper in Mr. Purdon's handwriting was drawn were in my possession for years. And some of those items were taken from the administration account of Levy Phillips, showing the times when the moneys were received; and from the testimony derived from the executors of Blaine, I presume that this account of Mr. Purdon's contains the dates of the receipts of the several sums. I am not certain that not more than one of the items were taken from the account of Levi Phillips.

Question. Did you instruct Mr. Purdon to draw up this agreement, to be submitted to Mrs. Phillips for her signature?

Answer. I did, in March last; can't tell the day. I had not, to the best of my knowledge and belief, heard of the application in Lancaster county, previously to giving those instructions. I do not know when Mr. Isaac B. Phillips arrived in this country. I cannot answer that he resided in my grandfather's family; my impression is that he did. I rarely was at Lancaster, and had but little communication with the family there. I have seen Isaac Phillips at Lancaster; but whether previously to the death of my grandfather, or subsequently, I can't tell.

Comm. adjourned to meet again at 3 o'clock, the same afternoon, at same place. June 14th, 1833, 3 P. M., cross examination renewed. The witness wishes to explain, as follows:

The papers from which Mr. Purdon prepared the account signed by Mrs. Phillips, now exhibited, I delivered to Mr. Purdon a long time since, and are now in his possession, and were in my possession in the time of the account-render suit in 1818, and were never in possession of Mrs. Phillips, or any of the executors, to my knowledge, unless they saw them in court in 1818. The papers *one* written by Mr. Phillips; one of the papers is in his handwriting. Those accounts were demanded in Mr. John Read's office, which Mrs. Phillips delivered to me. I do not know whether the auditors went into the merits

of that claim. I presented to the auditors a statement of the account between Simon, Levy, Trent, and Franks, in which Jos. Simon was charged with 100 pounds, which came to his hands from the sale of the house and lot at Carlisle, sold under a judgment as the property of William Trent. The suit before the auditors was for the recovery of 100 pounds; the house and lots having sold for 200 pounds; and under the judgment of the supreme court Joseph Simon's executors were directed to account with Michael Gratz, assignee of David Franks, for the 100 pounds, the subject of this suit. For this 100 pounds Jos. Simon had taken a bond, and the periods at which this 100 pounds were received from him were as nearly as we have it in our power to ascertain from the papers now in Mr. Purdon's possession, and in Mr. Levy Phillips' account. Mr. Purdon was not employed by any of the administrators, excepting myself, that I know of.

Question. Have you informed the administrators of Michael Gratz, or any of the children or representatives of Michael Gratz, of your negotiation with Mrs. Phillips?

[Answer.] I am one of the administrators. I have informed the other administrators of my having a received a deed from Mrs. Phillips for my father's interest in the land. I did not inform them of any other part of my negotiation or agreement with Mrs. Phillips.

Question by Mr. Cohen. Was that agreement, and the deeds made by Mrs. Phillips, other than the deeds spoken of as having informed the administrators of, made for your benefit, or that of the estate of Michael Gratz?

Answer. The paper speaks for itself, which provides for the payment of the debts due to the estate of Michael Gratz from the estate of Joseph Simon.

Upon the judgments being affirmed, the defence of which, as far as I am concerned, I desire that the children of Mrs. Bell Cohen may take defence, as I wish those judgments or suits to be tried on their merits, at Lancaster and here too.

Question by Mr. Cohen. Did not your counsel, in your presence, at the circuit court at Lancaster, before Judge Gibson, on the eighth of April, object to the children of Bell Cohen being permitted to come in and take defence?

Answer. I have no distinct recollection of what did take place at Lancaster. It might be that they did so; but in a conversation with my counsel, I stated that I had no objection to their coming in, but I wished it, and wished the cause tried on its merits, and not on technical objections.

Question by Mr. Cohen. Was that a private conversation with your counsel?

It was so. I returned from Lancaster the 9th April. I think so. The next days, Wednesdays and Thursdays, were festivals. I do not recollect that I called on Mrs. Phillips the Friday afterwards; I called at Mrs. Phillips' after I returned. She was not at home; I think she was at the synagogue. I did not call the next day after that; I called

the succeeding week. I do not recollect calling on Mrs. Phillips on the Friday spoken of. The first conversation I had with Mrs. Phillips after my return from Lancaster, I stated to her what had occurred at Lancaster. I don't recollect the particulars, but that the cause had not come on; and we had no further conversation on the subject of her affairs. I might have been there fifteen minutes. I had an opportunity of selecting such papers as I wanted from the trunk of Mrs. Phillips; and the only papers I wanted were relative to the land. Mr. Levy requested that I would make a list of the papers I took. I done so, and sent it to him; subsequently Mr. Levy sent it to me with some other papers, all which I returned to him, retaining the list to make a copy of it, except two papers, one of which was a letter from Samuel Breck, the other an agreement to Joseph Simon, attorney for David Franks and Harmann and Sheldon. There was not among the papers in that trunk, nor among the papers sent to me, an indemnity signed by me as agent of Michael Gratz; nor did I see any papers relating to the controversies between Michael Gratz and Joseph Simon, excepting a bond and mortgage of Wm. Trent to David Franks and Joseph Simon, among the papers of Mrs. Phillips or Mr. Levy; and that, had there been a single paper among such papers relating to the controversies between Michael Gratz or Joseph Simon, I would not have looked at them or touched them. This paper, called an account of Ephraim Blaine, was found in the trunk of Mr. Phillips; it has no relation to the lands of Joseph Simon. It was not used by me in any controversy since, and I intended to have returned it to Mr. Levy, but I could not lay my hands on it. I did not speak of that paper to Mr. Bevan, one of the auditors. I delivered the paper, dated 13th February, 1833, to Mr. Levy; don't know who delivered it to Mrs. Phillips. Mrs. Phillips gave me no paper in return, making an acknowledgment of this. I never had any conversation with her about the paper. I don't recollect that she ever said a word to me about it. I answer positively. Never saw it in her custody or possession; never heard anybody say that such a paper had been delivered to her. I paid to Mrs. Phillips five hundred dollars. I paid Mrs. Phillips two hundred dollars before the execution of the deed of 24th April, 1833, and three hundred dollars immediately after. I never paid her any other moneys excepting the five hundred dollars. I am indebted to her, for the instalment of lands purchased of her, 500 dollars in one year and 500 in two years. She holds nothing but my signature to agreement dated 13th February; the deed of 24th April was written by Mr. Prince. As to the lands contained in the deed of April 24th, 1833, witness answers: I frequently, previous to the year 1796, visited the lands on Middle creek, and Jack's creek; these lands are thin, ridgy lands; those in Bedford county I have no knowledge of; never saw them. I had some of the title papers in my possession, of the lands contained in the deed of 24th April, 1833, before I received that deed, being some of the papers contained in the list of papers before mentioned. I paid no money, but gave a receipt to Mrs. Phillips for 1,000 dollars. The lands, comprised in the deed of 24th April,

1833, was held in trust by the executors of Joseph Simon, in his declaration of trust, as the property of Michael Gratz; therefore, the consideration named, of $1,000, was for the consideration in it. I passed a receipt to Mrs. Phillips for that sum as administrator of Michael Gratz, she having given me a receipt on the deed for 1,000 dollars. I took the deed in my own name, for the use of my father's estate. I have made a declaration of that trust in a letter to my co-administrators, Joseph Gratz and Jacob Gratz, since my return, a few days since, before I was served with a subpœna to attend here. Isaac Prince drew the deed of April, 1833, under instructions from me, and nobody else. Mr. Beates had nothing to do with it; he drew the transcript of a deed which he thought defective, and I thought so, and it was not used. I had some of the title papers of the lands contained in the deed of 3d April, 1833, before the deed was delivered, but I had in my possession Joseph Simon's declaration of trust to Michael Gratz, describing the land. I had unofficial copies of the surveys of the lands. I had a recollection of the deed from the sheriff of Northumberland, and a transcript of it to Joseph Simon. I had also a copy of an agreement or compromise, of John F. Mifflin, about those lands, or some of them. I had Levy Phillips' statement of the sold and the unsold lands, and I had his account current as settled before the supreme court at Lancaster, which designated some of these lands.

Question by Mr. Kittera. Did you pay the consideration in the deed of 3d April, 1833, mentioned, or any part thereof?

Answer. I paid 500 dollars in cash, and my obligation as stated on the paper of 13th February, 1833, for the balance. I made some inquiry into the value of the lands mentioned in deed dated 3d April, 1833, and the information is contained in a letter from Simon Snyder, dated 16th August, 1831, in relation to the Mifflin and Union county lands, called the Juniata lands. I made the attempt to get information about the Columbia lands, and could not succeed. All the lands are poor, ridgy lands, occupied by the poorest class of tenants. The improvements, with one or two exceptions, worthless; some of them in tolerable good fence; and I should suppose their utmost value, if sold for cash, would not exceed 4 dollars or 4½ dollars per acre; some of them, two or three tracts in dispute, for which suits are pending. I think the one on which Hines has the possession is among the best; that he is destroying its value, by cutting off all the timber; hitherto little attention has been paid to these lands, and have deteriorated within twenty years more than 50 per cent., owing to the want of attention and care. The tracts, two in Columbia county, are also ridgy lands—immense ridges; some tolerable plough land and meadow, and the improvements on the lands and fences are worthless. I would not know how to estimate the value of these lands. I visited these lands in the month of May last, and derived my general information then. They are worthless lands—the Columbia lands, about one mile from the river Susquehanna, north branch, within two miles of Catawissa, west of that place. The consideration mentioned in the deed for the

lots in Lancaster was seven hundred dollars. That deed was drawn in Lancaster. I gave no special directions, except the consideration mentioned in it. I spoke to Mrs. Phillips about those three lots, and said her interest remained unsold, and I would send her deed to execute. Mrs. Cohen's interest in those lots had been sold; and I afterwards understood that Mrs. Cohen had no interest in one of those lots, sold by the sheriff for about 350 dollars, or something more. I did not consult my co-administrators in that sheriff's sale, but considered myself justified in doing the best for the estate—my father's estate. Mrs. Bell Cohen is a daughter to my grandfather and sister to my mother, and, therefore, my aunt. I do not know the age of Mrs. Cohen at the time of her death; I should suppose she was 75 years of age at that time. Being further examined, gives a copy of the following paper:

PHILADELPHIA, *April 24th*, 1833.

Received of Mrs. Leah Phillips, executrix of Joseph Simon, deceased, one thousand dollars, being the amount consideration money named in her deed to me of this date, for moiety and one-fourth interest in certain lands in Union and Juniata county, being Michael Gratz's, deceased, interest therein.

(Signed) SIMON GRATZ,
Administrator of Mich'l Gratz.

The report and account, signed by Mrs. Phillips, he did not intend to use before the auditors, as had been originally contemplated.

Mr. Gratz desires to add, that the paper contained in the list relative to the account render, being the account against Ephraim Blaine, he intends to return to Mrs. Phillips, and has now delivered it to Mr. Reed, her attorney.

SIMON GRATZ.

Sworn to and subscribed, this 14th day of June, A. D. 1833, before me,

MICHAEL W. ASH, *Adm'r.*

Supreme court, Penn., eastern district. M., 1811.—58.

SIMON GRATZ et al., administrators of Michael Gratz, deceased,
vs.
LEAH PHILLIPS, surviving executrix, &c., of Joseph Simon, deceased.
} Account render.

The death of Levi Phillips and Beliah Cohen suggested.

And the auditors so appointed as aforesaid, having heretofore assigned divers days and times for taking the account of the defendants, but the same not being then taken, assign the day of March, 1833, to take the account of the surviving defendant; it being shown to us, the deaths of the other two defendants, Levi Phillips and Beliah Cohen, were suggested on the record, on which said day of March, 1833, came the parties aforesaid, before the auditors.

And the auditors here bring into court the account of Leah Phillips, the surviving defendant and executrix of the last will and testament of Joseph Simon, deceased, the tenor of which is as follows:

The account of Leah Phillips, surviving defendant and executrix of the last will and testament of Joseph Simon, deceased, of and concerning the sum of one hundred pounds, being the one-half of one hundred pounds and six pence, concerning which the executors of the said Joseph Simon, deceased, were adjudged to render an account herein, specifying the various sums received, and the times at which the said one hundred pounds, and the interest accruing thereon, were received by the said Joseph Simon, deceased, in his lifetime, and also the interest due on such receipts to the time of rendering this account.

1790.—July 14.	Cash received by Jos. Simon,	£10 7 0	$27 70
	Interest thereon to the 28th March, 1833		70 90
Sept. 2.	Cash received by Jos. Simon,	£37 10 0	100 00
	Interest thereon to March 28, 1833 - -		255 20
1791.—Oct. 6.	Cash received by Jos. Simon,	£48 15 0	130 00
	Interest thereon to March 28, 1833 - -		323 30
1792.—Aug. 8.	Cash received by Jos. Simon;	£6 0 0	16 00
	Interest thereon to March 28, 1833 - -		39 00
Nov. 1.	Cash received by Jos. Simon,	£16 7 6	
	Do. bal. of the £100 and interest,	6 10 0	
		£22 17 6.	62 33
			$1,175 43

LEAH PHILLIPS,
Surviving def't and ex'x of the last will and testament of Joseph Simon, dec'd.

Phil'a, March 28, 1833.

Witness: J. Moss,
Lyon Joseph Levy.

And the auditors report the said account of the said Leah Phillips, surviving ex'x as aforesaid, so made before them, and do further report and award, that there is due from the estate of Joseph Simon, deceased, and from the said executrix of the said Joseph Simon, deceased, to the plaintiffs, the sum of eleven hundred and seventy-five dollars and forty-three cents, on the 28th day of March, 1833, according to the foregoing account, signed by the said accountant, and interest thereon from the said 28th day of March, 1833.

A correct copy of the account in handwriting of Mr. Purdon, and copy of award, and compared by me in presence of the parties.

(Signed) MICH'L W. ASH,
Alderman.

(The paper marked A, referred to in M. W. Ash's deposition, extends to this paper.

O. HOPKINSON, *Examiner*.
MICHAEL W. ASH.)

Endorsed—No. 1, circuit court, April session, 1839.

COHEN & al.
vs.
GRATZ & al.

Depositions of John K. Cowperthwait, Joab Scull, and Michael W. Ash, esq., and exhibit.

Afterwards, to wit, on the 31st day of July, A. D. 1840, the death of Rebecca M. Cohen, one of the respondents, is suggested, and thereupon bill of revivor filed in the words following, to wit:

To the honorable the judges of the circuit court of the United States, in and for the third circuit, in the eastern district of Pennsylvania, sitting in equity:

Humbly complaining, show unto your honors your orators, Samuel M. Cohen and Eleazer L. Cohen, citizens of the State of New Jersey, that your orators, on or about the sixteenth day of January, in the year one thousand eight hundred and thirty-nine, exhibited their original bill of complaint in this honorable court against Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph Cohen, all citizens of the State of Pennsylvania, thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth; to which said bill, remaining filed of record, they humbly beg leave to refer your honorable court. That Rebecca M. Cohen, one of the defendants, departed this life on or about the fifth day of July, eighteen hundred and forty, without having put in any answer to the said bill of complaint; whereupon the said suit and proceedings became abated as to her, and that letters of administration on her estate had been duly granted to Joseph S. Cohen, a citizen of the State of Pennsylvania, by the register of wills for the city and county of Philadelphia, in the State of Pennsylvania, as appears by a copy of said letters hereto annexed. To the end, therefore, that the said suit and proceedings may be revived against the said Joseph S. Cohen, and be in the same plight and condition as the same were at the time of the death of the said Rebecca M. Cohen:

May it please your honors to grant unto your orators the United States writ of subpœna, directed to the said Joseph S. Cohen, thereby commanding him on a certain day, and under a certain penalty therein to be mentioned, to be and appear before this honorable court, then and there to shew cause, if there be, why said suit and proceedings, so abated as to the said Rebecca M. Cohen as aforesaid, should not be

revived against him, and be in the same plight and condition as the same were at the time of the abatement thereof, and to stand to and abide such order and decree in the premises as this honorable court shall deem agreeable to equity and good conscience; and your orators will ever pray, &c.

BENJ. TILGHMAN, *for Comp'ts.*

July 31*st*, 1840.

PHILADELPHIA CITY AND COUNTY, *ss:*

William Perisol, esq., register for the probate of wills and granting letters of administration, in and for the city and county of
[L. S.] Philadelphia, in the Commonwealth of Pennsylvania, to Joseph S. Cohen, esq., greeting:

Whereas Miss Rebecca M. Cohen lately died intestate, as is sworn, having whilst she lived, and at the time of her decease, divers goods and chattels, rights and credits, within the said county, by means whereof the full disposition and power of granting letters of administration thereof is manifestly known to belong to me; I, therefore, desiring that the goods and chattels, rights and credits, which were of the said deceased, may be well and truly administered, converted, and disposed of, according to law, do hereby grant unto you, the said Joseph S. Cohen, full power, by the tenor of these presents, to administer the goods and chattels, rights and credits, which were of the said deceased, within the said county, as also to ask, collect, levy, recover, and receive the credits, whatsoever, of the said deceased, which, at the time of her death were owing, or did in any way belong to her, and pay the debts in which the said deceased stood obliged, so far forth, as the said goods and chattels, rights and credits, will extend, according to their rate and order of law; especially of well and truly administering the goods and chattels, rights and credits, which were of the said deceased, and making a true and perfect inventory and conscionable appraisement thereof, and exhibiting the same into the register's office at Philadelphia, on or before the 30th day of August next ensuing; and also a true and just account, calculation, and reckoning, of your administration, upon your solemn oath to render, at or before the 30th day of July, 1841, or when legally thereto required. And I do, by these presents, ordain, constitute, and depute you, the said Joseph S. Cohen, administrator of all and singular the goods and chattels, rights and credits, which were of the said deceased, within the limits aforesaid, saving harmless, and forever indemnifying me, and all other officers, against all persons, by reason of your administration aforesaid; and saving all other their rights, &c.

In testimony whereof I have caused the seal of the said office to be hereunto affixed. Dated at Philadelphia aforesaid, the 30th day of July, 1840.

WM. PERISOL, *Register.*

Endorsed—No. 1.—Circ't court, Apr. S.—39.—Cohen and al. vs. Gratz and al.—Bill of revivor, &c.

I hereby appear to the within bill of revivor.
July 31, 1840. J. SIMON COHEN.

Filed 31 July, 1840.

Circuit court, U. S., April session, 1839.—No. 1.

COHEN et al. vs. GRATZ et al. } In equity.

The joint and several answer of Sarah M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, to the complainants' bill of complaint in the above case.

The respondents believe, that all the matters of fact set forth in the said bill of complaint are true as therein stated, and humbly submit themselves to such order and decree in the premises as *to* the court, in its wisdom, may think fit to pass.

SARAH M. COHEN,
RACHEL M. COHEN,
ELKALAH M. COHEN,
ABR'M MYERS COHEN.
J. SIMON COHEN,
Sols. for pl'ffs and above deft's.

July 31, 1840.

Endorsed—No. 1.—Circ't court, April S.—39.—Cohen and al. vs. Gratz and al. Answer of S. M. Cohen et al. to orig'l bill.

Filed 31 July, 1840.

Circuit court, U. S., April sess., 1839.—No. 1.

COHEN et al. vs. GRATZ et al. } In equity.

The answer of Joseph S. Cohen, administrator of Rebecca M. Cohen, to the complainants' original bill and bill of revivor, in the above case.

The respondent believes, that all the facts set forth in the said original bill and bill of revivor are true as therein stated, and humbly submits to such orders and decrees as this honorable court may think proper to pass in the premises.

July 31, 1840. J. SIMON COHEN.

Endorsed—No. 1.—Circ't court, Apr. S.—39.—Cohen and al. vs. Gratz and al. Answer of J. S. Cohen, adm'r, &c., to original bill and bill of revivor.

Filed 31 July, 1840.

COHEN vs. GRATZ. }

On this 14th day of May, A. D. 1841, ordered, that it be referred to

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a master to take an account of all disbursements made by Joseph Simon, or his executors, or by Michael Gratz, or his administrators, on account of lands held in common by said Simon and Gratz, the title whereto was acquired under or in virtue of a bond and mortgage given by William Trent to David Franks and Joseph Simons.

2. To state whether in any settlement, by suit or otherwise, any account of such disbursement has been heretofore *been* taken or adjusted.

3. That the master take an account of all moneys which were due to Joseph Simon, or his executors, for lands of said Simon, sold by him or them, on which any arrears of purchase money were due in February, 1833; also, what amount thereof has since been received by Simon Gratz, or his executors.

4. That the master inquire into, and state the value of the lands belonging to the estate of Joseph Simon, which were conveyed by Leah Phillips to Simon Gratz by her deed dated 3d April, 1833, together with an account of all disbursements since made by said Gratz, or executors, on account of said lands, of sales made thereof, of purchase money received, of purchase money due, of all existing securities therefor.

5. That on the application of either party the clerk of this court be authorized and directed to grant rules for taking depositions of witnesses resident in Philadelphia city or county, in the counties of Lancaster or Dauphin, on ten days' notice; also to issue commissions to any other part of this State, or elsewhere, to examine witnesses on interrogatories filed on fifteen days' notice.

6. To examine and report what exhibits annexed to the bill and answers are duly proved, together with the proof thereof; also as to any papers which have been offered or read at the hearing of this cause; and if competent proof has not been made thereof, then to take depositions relating thereto, by rule or commission as aforesaid, as the said master shall direct.

The court refuses the right of further directions to the master.

Endorsed—No. 1, circuit court, Cohen and al. vs. Gratz and al. Order of reference to master. Oliver Hopkinson appointed master under the within order. May 14, 1841.

COHEN et al. vs. GRATZ et al. } No. 1. In equity.

Circuit court, April sessions, 1839.

Interrogatories to witnesses to be produced and examined on behalf of the complainants at Catawissa, Columbia county, Pennsylvania.

Interrogatory 1. Do you know the parties, complainants or respondents, any, or which of them?

2. Have you a knowledge of the value of lands in the neighborhood of Catawissa? State your means of knowledge, your occupation, the

place of your residence, and the length of time you resided there, or in the neighborhood.

3. Have you any knowledge of three adjacent tracts of land nearly opposite and in the neighborhood of Catawissa, late the estate of Joseph Simon, deceased, and since claimed by Simon Gratz, and by him sold to George A. Frick and W. G. Henley? State the quantity of arable land, the timber, its contiguity to roads, its distance from Catawissa, and its exact situation; and if there be any and what ore or minerals on the said land, or what other, if any, advantages it possesses.

4. What was the value of said land in February or April, 1833; what has been the value of the land since; what was it at the time of the sale by Simon Gratz?

5. Can you state the value of lands of similar quality in the neighborhood? State the markets to which the produce of the same can most conveniently be taken.

6. What does the produce of a farm usually bring at Catawissa; and is the market there a good one or otherwise; is there a ready sale for all the produce at that market?

7. At what rate can lime be furnished for the use of said tracts; how near are they to lime kilns? State generally the advantages, if any, it has in that respect.

8. How and by whom are the lands in that immediate neighborhood holden; are there many tracts for sale, or are they owned by substantial farmers?

9. Are there or are there not difficulties in obtaining and purchasing lands in that neighborhood?

10. Into how many farms could those tracts be advantageously divided?

11. Was the sale by Simon Gratz public or private; was there any public advertisement of the tracts being for sale?

12. State any thing further you may know material to the complainants, as fully as if you had been thereto particularly interrogated.

BENJ'N TILGHMAN,
THOMAS A. BUDD,
Sols. for complainants.

Endorsed—"1, April sessions, 1839, circuit court, U. S., in equity," Cohen et al. vs. Gratz et al., filed 18 September, 1841. The complainants enter a rule on interrogatories filed to take the depositions of witnesses before any justice of the peace of Columbia county, at Catawissa, in said county, on fifteen days notice, pursuant to an order of the court made May 14th, 1841.

BENJ. TILGHMAN,
THOMAS A. BUDD,
For complainants.

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COHEN
vs.
GRATZ.

Circuit court, April session, 1839, No. 1, in equity.

Cross interrogatories to be administered to witnesses to be produced and examined on behalf of the complainants, at Catawissa, Columbia county, Pennsylvania.

1st cross interrogatory. If you answer the complainants' third interrogatory affirmatively, then state whether or not negotiations for the sale of said tracts, or some of them, were not long in progress; how long; with whom, and on account of what difficulties they were delayed. Were there not tenants or adverse claimants on all or some of the said tracts, and was there not some difficulty in removing them; at what price were the said tracts sold, and when; and was not the said price at the time of said sale a fair price for the same?

2d cross interrogatory. If you state in answer to the plaintiff's interrogatories in chief, or any of them, that there are minerals on the said tracts, or any of them, state the condition of the mines containing the same at the time of the sale, and at the present time. Were they opened and in operation at that time; and if opened since, at whose and what expense have they been opened? State your knowledge fully. State also the condition of said mines in February and April, 1833.

3d cross interrogatory. Has or has not there been a considerable increase in the value of real estate near Catawissa since 1833, in consequence of the opening of the Susquehanna canal, and other public improvements in railroads and canals? If so, state at what time the said Susquehannah Canal Company was incorporated, and the said canal completed. State fully your knowledge on this subject.

4th cross interrogatory. If you state, in answer to the eleventh interrogatory, that the sale of said lands by Simon Gratz was private, *and* state whether by such answer you mean to say that there was any unusual or improper privacy connected therewith.

5th cross interrogatory. What is your age, occupation, and residence; and how long have you resided at or in the neighborhood of Catawissa, in Columbia county, or on or near the north branch of the river Susquehanna?

6th cross interrogatory. Do you know any other matter or thing material to the said defendants, or either of them? If so, state the same as if particularly interrogated thereto.

Defendants, in filing these cross interrogatories, waive no objection to the form of taking the said depositions, or to the interrogatories in chief. They object to the fifth, sixth, eighth, and ninth interrogatories in chief, and to any answers thereto, as irrelevant and incompetent.

W. M. MEREDITH,
WILLIAM B. REED,
For ex'rs of S. Gratz.

Endorsed: "In equity, Cohen vs. Gratz. Defendants' cross interrogatories. Filed 1 October, 1841."

COHEN et al.
vs.
GRATZ et al. } No. 1.

Circuit court, U. S., Ap. sess., 1839.

It is agreed that a commission be issued in the above case to Catawissa, Columbia county, on the interrogatories and cross interrogatories filed, and that Ezra Hayhurst, esq., justice of the peace, and ——— Pleasants, esq., attorney at law, or either of them, be the commissioners on the part of the complainants; and Calvin, esq., and Joseph Paxson, esq., or either of them, be commissioners on the part of the defendants, who have filed cross interrogatories, and that the execution of said commission be commenced on Thursday, October 7, 1841, between the hours of 9 and 5 o'clock, p. m., at the office of Joseph Brobst, esq., justice of the peace of Columbia county, at Catawissa.

October 4, 1841.

BENJ. TILGHMAN,
THOMAS A. BUDD,
For complainants.
W. M. MEREDITH,
W. B. REED,
For executors of S. Gratz, deceased.

Endorsed: "No. 1, circuit court, April session, 1839—Cohen et al. vs. Gratz et al.. Agreement for commission to Columbia, filed 4th October, 1841."

COHEN et al.
vs.
GRATZ et al.

Circuit court, April session, 1839, No. 1, in equity.

Interrogatories to be administered to witnesses to be produced and examined on behalf of the complainants, at Catawissa, Columbia county, Pennsylvania.

Interrogatory 1. Do you know the parties complainants or respondents, any or which of them?

2. Have you knowledge of the value of lands in the neighborhood of Catawissa? State your means of knowledge, your occupation, the place of your residence, and the length of time you resided there or in the neighborhood.

3. Have you any knowledge of three adjacent tracts of land nearly opposite and in the neighborhood of Catawissa, late the estate of Joseph Simon, deceased, and since claimed by Simon Gratz, and by him sold to George A. Frick and W. G. Henley? State the quantity of arable land, of timber, its contiguity to roads, its distance from Catawissa, and its exact situation; if there be any, *any* and what ore or minerals on the said land, or what other, if any, advantages it possesses.

4. What was the value of said land in February or April, 1833; what has been the value of said land since; what was it at the time of the sale by Simon Gratz?

5. Can you state the value of land of similar quality in the neighborhood? State the markets to which the produce of the same can most conveniently be taken.

6. What does the produce of a farm usually bring at Catawissa; is the market there a good one, or otherwise; is there a ready sale for all the produce at that market?

7. At what rate can lime be furnished for the use of said tract; how near are they to lime kilns? State generally the advantages, if any, it has in that respect.

8. How and by whom are the lands in the immediate neighborhood holden; are there many tracts for sale, or are they owned by substantial farmers?

9. Are there or are there not difficulties in obtaining or purchasing lands in that neighborhood?

10. Into how many farms could those tracts be advantageously divided?

11. Was the sale by Simon Gratz public or private; was there any public advertisement of the tracts being for sale?

12. State any thing further you may know material to the complainants, as fully as if you had been thereto particularly interrogated.

BENJ. TILGHMAN,
THOMAS A. BUDD,
For complainants.

October 22d, 1841.

The complainants nominate as commissioners Ezra S. Hayhurst and James Pleasants, esq., of Catawissa, or either of them.

Endorsed: No. 1, circt. ct., Apr. s., '39. Cohen & al. v. Gratz & al.—Equity. The complainant enters a rule for a commission to Catawissa, Columbia county, Pa., on 15 days' notice, in conformity with the order of the court of May 14, 1841.

BENJ. TILGHMAN,
THOS. A. BUDD,
For complainants.

Oct. 22d, 1841.

Filed 22d October, 1841.

COHEN
vs.
GRATZ.

Circuit court, April session, 1839, No. 1, in equity.

Cross interrogatories to be administered to witnesses to be produced and examined on behalf of the complainants, at Catawissa, Columbia county, Pennsylvania.

1st cross interrogatory. If you answer the complainants' third interrogatory affirmatively, then state whether or not negotiations for the sale of said tracts, or some of them, were not long in progress—how long, with whom, and on account of what difficulties they were delayed; were there not tenants or adverse claimants on all or some of the said tracts, and was there not some difficulty in removing them; at what price were the said tracts sold, and when; and was not the said price, at the time of said sale, a fair price for the same?

2d cross interrogatory. If you state, in answer to the plaintiffs' interrogatories in chief, or any of them, that there are minerals on the said tracts, or any of them; state the condition of the mines containing the same at the time of the sale and at the present time. Were they opened and in operation at that time; and, if opened since, at whose and what expense have they been opened? State your knowledge fully; state also the condition of said mines in February and April, 1833.

3d cross interrogatory. Has or has not there been a considerable increase in the value of real estate near Catawissa, since 1833, in consequence of the opening of the Susquehannah canal, and other public improvements in railroads and canals? If so, state at what time the Susquehanna Canal Company was incorporated, and the said canal completed. State fully your knowledge on this subject.

4th cross interrogatory. If you state, in answer to the eleventh interrogatory, that the sale of said tracts by Simon Gratz was private, then state whether, by such answer, you mean to say there was any unusual or improper privacy connected therewith.

5th cross interrogatory. What is your age, occupation, and residence, and how long have you resided at or in the neighborhood of Catawissa, in Columbia county, or on or near the north branch of the river Susquehannah?

6th cross interrogatory. Do you know any other matter or thing material to the said defendants, or either of them? If so, state the same as if particularly interrogated thereto.

Defendants, in filing these cross interrogatories, waive no objection to the form of taking the said depositions, or to the interrogatories in chief. They object to the fifth, sixth, eighth, and ninth interrogatories in chief, and to any answers thereunto, as irrelevant and incompetent.

WM. MEREDITH,
WM. B. REED,
For defendants.

Defendants nominate as commissioner Joseph Paxson, esq. If he is absent, they concur in nominating James Pleasants, esq.

W. B. REED, *for def'ts.*

Endorsed: Cohen & al. v. Gratz & al. Cross interrogatories for commission to Catawissa, Columbia county, Pa. Filed 30th Oct'r, 1841.

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit.

SAMUEL M. COHEN and Eleazer L. Cohen, citizens of the State of New Jersey,
vs.
SIMON GRATZ, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, citizens of the State of Pennsylvania. } April sess., 1839, No. 1, equity.

The President of the United States, to Ezra S. Hayhurst and James Pleasants, esquires, commissioners named by and on behalf of the complainants; and Joseph Paxson, esq., or, in his absence, James Pleasants, esq., commissioners nominated by and on behalf of the defendants.

[L. S.] Know ye, that, in confidence of your prudence and integrity, we have given unto you, and by these presents do give unto you as aforesaid, full power and authority, in pursuance of a rule lately made in the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain action in equity therein depending, wherein the said Samuel M. Cohen and Eleazer L. Cohen are complainants, and the said Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, defendants, to call before you, at a certain day and place by you for that purpose to be appointed, all and every person and persons who may be named to you by the said complainants as witnesses in the said action, and then and there to examine them, on their respective oaths and affirmations, on certain interrogatories hereunto annexed, touching the premises, and to reduce their testimony to writing; and, when you shall have so done, you are to send the same to the said circuit court, closed up and under your seals, plainly and distinctly set, together with this writ.

Witness the honorable *the* Roger B. Taney, chief justice of the Supreme Court of the United States at Philadelphia, this twentieth day of November, A. D. 1841, and the sixty-sixth year of the independence of the said United States.

FRAS. HOPKINSON,
Clerk circuit court.

COHEN et al.
vs.
GRATZ et al.

Circuit court, April sessions, 1839, No. 1, in equity.

Interrogatories to be administered to witnesses to be produced, sworn, and examined, on behalf of the complainants, at Catawissa, Columbia county, Pennsylvania.

Interrogatory 1. Do you know the parties complainants or respondents, any or which of them?

2. Have you knowledge of the value of lands in the neighborhood of Catawissa? State your means of knowledge, your occupation, the place of your residence, and the length of time you resided there or in the neighborhood.

3. Have you any knowledge of three adjacent tracts of land nearly opposite and in the neighborhood of Catawissa, late the estate of Joseph Simon, deceased, and since claimed by Simon Gratz, and by him sold to George A. Frick and W. G. Hurley? State the quantity of arable land, of timber, its contiguity to roads, its distance from Catawissa, and its exact situation; if there be any and what ore or minerals on the said land; or what other, if any, advantages it possesses.

4. What was the value of said land in February or April, 1833; what has been the value of said land since; what was it at the time of the sale by Simon Gratz?

5. Can you state the value of land of similar quality in the neighborhood? State the markets to which the produce of the same can most conveniently be taken.

6. What does the produce of a farm usually bring at Catawissa; is the market there a good one or otherwise; is there a ready sale for all the produce at that market?

Interrogatory 7. At what rate can lime be furnished for the use of the said tract; how near are they to lime kilns? State generally the advantages, if any, it has in that respect.

8. How and by whom are the lands in the immediate neighborhood holden; are there many tracts for sale, or are they owned by substantial farmers?

9. Are there or are there not difficulties in obtaining or purchasing lands in that neighborhood?

10. Into how many farms could those tracts be advantageously divided?

11. Was the sale by Simon Gratz public or private; was there any public advertisement of the tracts being for sale?

12. State any thing further you may know material to the complainants, as fully as if you had been thereto particularly interrogated.

BENJ. TILGHMAN,
THOMAS A. BUDD,
For complainants.

October 22, 1841.

The complainants nominate as commissioners Ezra S. Hayhurst and James Pleasants, esqs., of Catawissa, or either of them.

A true copy from the original filed.

FRAS. HOPKINSON,
Clerk circuit court.

COHEN
vs.
GRATZ.

Circuit court, April session, 1839, No. 1, in equity.

Cross interrogatories to be administered to witnesses to be produced and examined on behalf of the complainants, at Catawissa, Columbia county, Pennsylvania.

1st cross interrogatory. If you answer the complainants' third interrogatory affirmatively, then state whether or not negotiations for the sale of said tracts, or some of them, were not long in progress—how long; with whom, and on account of what difficulty, they were delayed; were there not tenants or adverse claimants on all or some of the said tracts, and was there not some difficulty in removing them; at what price were the said tracts sold, and when; and was not the said price, at the time of said sale, a fair price for the same?

2d cross interrogatory. If you state, in answer to the plaintiffs' interrogatories in chief, or any of them, that there are minerals on the said tracts, or any of them, state the condition of the mines containing the same at the time of the sale and at the present time: Were they opened and in operation at that time; and if opened since, at whose and what expense have they been opened? State your knowledge fully. State also the condition of the said mines in February and April, 1833.

3d cross. Has or has not there been a considerable increase in the value of real estate near Catawissa, since 1833, in consequence of the opening of the Susquehanna canal, and other public improvements in railroads and canals? If so, state at what time the Susquehanna Canal Company was incorporated, and the said canal completed. State fully your knowledge on this subject.

4th cross. If you state, in answer to the eleventh interrogatory, that the sale of said tracts by Simon Gratz was private, then state whether by such answer you mean to say that there was any unusual or improper privacy connected therewith.

5th cross. What is your age, occupation, and residence, and how long have you resided at or in the neighborhood of Catawissa, in Columbia county, or on or near the north branch of the river Susquehannah?

6th cross. Do you know any other matter or thing material to the said defendants, or either of them? If so, state the same, as if particularly interrogated thereto.

Defendants, in filing these cross interrogatories, waive no objection

to the form of taking the said depositions, or to the interrogatories in chief. They object to the 5th, 6th, 8th, and 9th interrogatories in chief, and to any answers thereto, as irrelevant and incompetent.

W. M. MEREDITH,
WM. B. REED,
For defendants.

Defendants nominate as commissioner Joseph Paxson, esquire. If he is absent, they concur in nominating James Pleasants, esq.

W. B. REED,
For defendants.

A true copy from the original filed.

FRAS. HOPKINSON,
Clerk circuit court, U. S.

The execution of this commission appears in a certain schedule hereunto annexed. JAMES PLEASANTS.

Depositions of witnesses produced, sworn, (or affirmed,) and examined, on the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and forty-one, at the office of James Pleasants, esq., in the town of Catawissa, in the county of Columbia, and State of Pennsylvania, before James Pleasants, (Ezra S. Hayhurst being absent, and Joseph Paxson being absent and sick,) by virtue of a commission issuing from the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, to Ezra S. Hayhurst and James Pleasants, esquires, commissioners named by and on behalf of the complainants; and Joseph Paxson, esquire, or, in his absence, James Pleasants, esq., commissioners nominated by and on behalf of the defendants, directed for the examination of witnesses in a certain cause depending in said court, wherein Samuel M. Cohen and Eleazer L. Cohen, citizens of the State of New Jersey, are plaintiffs, and Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, citizens of the State of Pennsylvania, are defendants. April session, 1839, No. 1, in equity.

Philip Wolever, of Catawissa town, in *in* the county of Columbia, State of Pennsylvania, aged forty-five years, or thereabouts, being produced, sworn, and examined on behalf of the plaintiffs, deposeth as follows:

To the first interrogatory on the part of the plaintiffs he answers as follows: I know Joseph S. Cohen and Abraham M. Cohen. I do not know any other of the parties, but I have seen one of the Mr. Gratzes, I don't know which one.

To the second interrogatory on the part of the plaintiffs he answers as follows: I have a knowledge of the value of lands in the neighbor-

hood of Catawissa. I have the knowledge of their value by hearing them sold and seeing them. I am a farmer. I reside in Catawissa town; have resided there since last April, and have resided in the neighborhood fourteen years.

To the third interrogatory on the part of the plaintiffs he answereth as follows: I know the land; I lived on it long enough; I lived on it eight years, from about the year eighteen hundred and twenty-eight, until the year eighteen hundred and thirty-six. In fact, the whole of it could be farmed. I don't think there is twenty acres but what could be farmed, there must be upwards of one hundred acres of cleared land there, and about four hundred and twenty-five acres of timber. The Catawissa road to Danville and to Bloomsburg goes through the land. The land is one mile and a half from Catawissa, one mile and a half from the river Susquehanna, three miles from Bloomsburg, eight miles from Danville, one mile from the North Branch canal. I believe there is iron ore on the land. It is well timbered land I believe the timber would pay for the land at twenty dollars an acre. Lime is within one mile of the land, and plenty of it in a mile and a half. Grist and saw mills are handy. I don't know of any other advantages it has.

To the fourth interrogatory on the part of the plaintiffs he answereth as follows: The land was worth about ten dollars an acre in February and April, eighteen hundred and thirty-three, I should suppose it has been worth twenty dollars since that time. And that it was worth as much at the time of the sale by Simon Gratz as it is now, without the buildings upon it. It is worth twenty dollars an acre now without the buildings. I mean to say the land was worth twenty dollars per acre without the buildings in eighteen hundred and thirty-three, in April.

To the fifth interrogatory on the part of the plaintiffs he answers as follows: Heinbach's farm adjoining this was bid up to nineteen dollars an acre last Saturday, and they would not let it go at that price. Land of similar quality with the land in question, situated in the neighbood, will bring from fifteen to twenty dollars an acre. The produce can most conveniently be taken to Danville and Catawissa, Pottsville and Bloomsburg.

To the sixth interrogatory on the part of the plaintiffs he answers as follows: Wheat generally brings a dollar a bushel at Catawissa; it has brought a dollar and a half. Rye brings about sixty-two and a half cents a bushel at Catawissa, and corn about fifty cents. Oats about thirty-seven and a half cents. Buckwheat about forty cents, potatoes about thirty-one cents. The market at Catawissa is as good as any other place I know of. I guess there is a ready sale pretty much for all the produce that is brought into Catawissa.

To the seventh interrogatory on the part of the plaintiffs he answers as follows: Lime can be delivered at the lands in question for ten cents per bushel; the land is a mile and a mile and a half from lime kilns. I have already answered that in my answers to the third interrogatory of the plaintiffs. The land in question has great advantage in being

near the lime kilns, so that they may haul the lime on the land for manure; it is very good for land to lime it.

To the eighth interrogatory on the part of the plaintiffs he answers as follows: The lands in the neighborhood are generally holden by substantial farmers. There are not many tracts for sale that I know of.

To the ninth interrogatory on the part of the plaintiffs he answers as follows: There are no difficulties in getting a farm in the neighborhood, if a man has the money. I mean there is no difficulty in purchasing a farm. I don't know as a great many farms could be bought right here for a fair price.

To the tenth interrogatory on the part of the plaintiffs he answers as follows: I think those tracts of land in question could be divided into three farms advantageously, and have timber enough on each farm; the springs would suit too.

To the eleventh interrogatory on the part of the plaintiffs he answers as follows: I don't know of any public advertisement for the sale. I never *seen* any. I don't know any thing at all about it.

To the twelfth interrogatory on the part of the plaintiffs he answers as follows: I don't know any thing else material to the complainants.

To the first cross interrogatory on the part of the defendants he answers as follows: I don't know of any negotiations having been in progress for said tracts of land. There were no tenants or *or* adverse claimants on any of the tracts that I know of. There was no difficulty in removing any tenants or adverse claimants from the said tracts that I know of. I rented from Mr. Phillips. I don't know at what prices the said tracts were sold, nor whether they brought a fair price.

To the second cross interrogatory on the part of the defendants he answers as follows: The mines have never been opened on the said tracts. I only know of minerals being on the land by the appearance of the water, it looks like the water on the land where they have found one. I have ploughed up something on the land that looked like ore, and it was said to be ore.

To the third cross interrogatory on the part of the defendants he answers as follows: I believe land about Catawissa has increased in value since in eighteen hundred and thirty-three, in consequence of the opening of the North Branch canal. I don't know the year the canal was completed. I don't know of any Susquehanna Canal Company.

To the fourth cross interrogatory on the part of the defendants he answers: I don't know any thing at all about it.

To the fifth cross interrogatory on the part of the defendants he answers: I am about forty-five years of age, and have resided in the neighborhood of Catawissa, and near the North branch of the Susquehanna, about fourteen years.

To the sixth cross interrogatory on the part of the defendants he answers: I know nothing further material to the said defendants.

PHILIP WOLEVER.

(James Pleasants.)

Sworn and subscribed before me.

JAMES PLEASANTS, *Commissioner.*

William Holling-head, of the town of Catawissa, aged forty-one years or thereabouts, being produced, sworn, and examined on behalf of the plaintiffs, deposeth as follows:

To the first interrogatory on the part of the plaintiffs he answers as follows: I know none of the parties, complainants or respondents, except Mr. Abraham M. Cohen, and him I only saw twice.

To the second interrogatory on the part of the plaintiffs he answers as follows: I have a knowledge of the value of lands in the neighborhood of Catawissa. I came to know them by farming and working on them. I generally follow farming. I reside in Catawissa town, and have resided there seven years last past, and before that in Monton township, in Columbia county, for one year; and about three or four years before that I lived on the lands in question for about six months.

To the third interrogatory on the part of the plaintiffs he answers as follows: I know the lands mentioned in this interrogatory; there is about one hundred and fifty or sixty acres of cleared land; there has been about fifty or sixty acres cleared on it since Woliver left it. There must be from three hundred and *and* forty to four hundred acres of timber land in the tracts; there *is* roads leading from Catawissa through it, and to Bloomsburg and to Danville. It is about one mile from the North Branch canal, and a mile and a half from Catawissa. I don't know of any ore or minerals upon it, except the signs seen in the water and ploughing. The land is handy to market, Catawissa, Bloom, and Danville. The soil is of very good quality where the land is new, and the other can be made good by hauling lime on it; it has been worn out; lime is handy, and can be got so as to make the land produce as good grain as new land would.

To the fourth interrogatory on the part of the plaintiffs he answers as follows: The land in question must have been worth twenty-five or thirty dollars in February or April, eighteen hundred and thirty-three. I believe its value now is thirty dollars per acre, judging from the way lands in the neighborhood, and adjoining it, have sold. I should think it was worth as much as it is *worn* at the time of the sale by Simon Gratz.

To the fifth interrogatory on the part of the plaintiffs he answers as follows: They are asking from thirty to thirty-five dollars per acre for land in the neighborhood of similar quality. The produce of farms in the neighborhood has a market in Catawissa, Danville, Bloomsburg, and Pottsville.

To the sixth interrogatory on the part of the plaintiffs he answers as follows: Wheat will fetch a dollar and twelve and a half cents, and from that to a dollar and a quarter per bushel in Catawissa. Rye will fetch from fifty to seventy-five cents per bushel. Corn will fetch from fifty to sixty cents; oats will fetch from thirty-one to forty cents; buckwheat

(James Pleasants.)

from forty cents to fifty; potatoes from twenty-five to thirty-seven and a half cents per bushel; and hay will fetch from ten to twelve dollars per ton.

To the seventh interrogatory on the part of the plaintiffs he answers as follows: Lime can be furnished upon the tracts, or any of them, for eleven cents per bushel; one lime kiln is about one mile and a quarter off the land, and several other kilns about from a mile and a half to two miles off; it is a great advantage to have lime on a place to manure it.

To the eighth interrogatory on the part of the plaintiffs he answers as follows: The lands in the neighborhood are mostly holden by the owners of them; I know of but one tract of land about there for sale; they are generally owned by good substantial farmers.

To the ninth interrogatory on the part of the plaintiffs he answers as follows: There is difficulty in obtaining lands in that neighborhood, because there is but one farm about there to be sold now.

To the tenth interrogatory on the part of the plaintiffs he answers as follows: The tracts could be divided into three good farms, and it would be of advantage to them to be divided.

To the eleventh interrogatory on the part of the plaintiffs he answers as follows: I don't know that there was any public advertisement of the tracts being for sale by Simon Gratz, nor do I know whether the sale by him was public or private; I know nothing about it.

To the twelfth interrogatory on the part of the plaintiffs he answers: I believe I do not know any other thing that is material to the complainants; I believe I have answered fully all I know.

To the first cross interrogatory on the part of the defendants he answers as follows: I don't know of any negotiations being in progress for any part of said tracts of land at any time; I don't know of any difficulty about them; I don't know of any adverse claimants to the land; I don't know of any tenants or any other persons being in possession of the lands at any time who gave any difficulty in moving off; I don't know what the land was sold for; I can't say whether they brought a fair price; I never heard any thing about their price.

To the second cross interrogatory on the part of the defendants he answers as follows: There was no mines ever opened upon any of said tracts of land.

To the third cross interrogatory on the part of the defendants he answers as follows: There has been a good bit of increase of value of the real estate about Catawissa since the year eighteen hundred and thirty-three; I think it may be attributed to the opening of the North Branch canal; I don't know any thing of the incorporation of any Susquehanna Canal Company.

To the fourth cross interrogatory on the part of the defendants he answers as follows: I know nothing about the sale, whether it was public or private, and so I stated in answer to the plaintiffs' eleventh interrogatory.

To the fifth cross interrogatory on the part of the defendants he

answers as follows: I am forty years of age; I will be forty-one in May next; and I reside in Catawissa, and have resided in and near Catawissa and near the North branch of this Susquehanna for twenty-one or two years last passed.

To the sixth cross interrogatory on the part of the defendants he answers as follows: I do not know any matter or thing material to the said defendants or either of them. I have answered fully all I know.

WILLIAM HOLLINGHEAD.

Sworn and subscribed before me.

JAMES PLEASANTS,
Commissioner.

Michael Fornwald, of the town of Catawissa, in Columbia county, aged forty-four years or thereabouts, being produced, sworn, and examined on behalf of the plaintiffs, deposeth as follows:

To the first interrogatory on the part of the plaintiffs he answers as follows: I do not know any of the parties, complainants or respondents, excepting Abraham M. Cohen, whom I have seen twice.

To the second interrogatory on the part of the plaintiffs he answers as follows: I have some knowledge of the value of lands about Catawissa and in the neighborhood; the means of my knowledge is seeing and hearing of farms about Catawissa being sold, and from my general inquiries about prices and value of farms among the farmers in the neighborhood; I am a hatter by occupation; I reside in the town of Catawissa, and have resided there all my life, except about four years at one time.

To the third interrogatory on the part of the plaintiffs he answers as follows: I have some knowledge of three contiguous tracts of land lying in Montoin township, in Columbia county, formerly called Hemlock township, said to belong to George A. Frick and William G. Hurley; I think they have been called the owners for three or four years; I don't know who they bought from; I should suppose the whole body of the land can be farmed; there must be from one hundred and thirty to one hundred and sixty acres now under cultivation, and between three and four hundred acres of timber land. There is one road leading through the land, running from the river opposite to the town of Catawissa, and intersecting the valley road, running from Bloomsburg to Danville; and a road branches off from this one near the farm house on the land on top of the hill, which goes to Bloomsburg; the land is one mile and a half from the town of Catawissa; about one and a quarter mile from the canal; about three miles from Bloomsburg, and seven or eight from Danville; I don't know of any ore or other mineral upon the land; the land is convenient to market; a school-house is close by it.

To the fourth interrogatory on the part of the plaintiffs he answers as follows: I suppose these lands must have been worth about twenty dollars an acre, in the month of February or April, eighteen hundred thirty-three; they have been worth a little more than that a part of the

time since; I think it was worth twenty-one dollars in the year eighteen hundred and thirty-seven; I don't know when Mr. Simon Gratz sold the land.

To the fifth interrogatory on the part of the plaintiffs he answers as follows: Land of similar quantity to the land in question is worth from twenty-five to thirty dollars per acre; neighboring farmers are asking at that rate for their lands of same quality; the produce of the land in question, and lands in the neighborhood, goes to Catawissa, Bloomsburg, Danville, and some of it to Pottsville.

To the sixth interrogatory on the part of the plaintiffs he answers as follows: The usual average price of wheat at Catawissa for the last six years has been one dollar and twenty-five cents per bushel; I usually pay fifty cents a bushel for corn and buckwheat; from thirty-one to forty cents for potatoes per bushel; wood two dollars per cord. The Catawissa market is a good one for farm production; there has heretofore been ready sale there for them.

To the seventh interrogatory on the part of the plaintiffs he answers as follows: I think lime can delivered on the lands in question for ten cents per bushel; I think one lime kiln is about a mile off from the land, and there are several within two miles; the land has the advantage of cheap manure when lime can be hauled upon it at low rate.

To the eighth interrogatory on the part of the plaintiffs he answers as follows: The lands are generally, in the neighborhood, owned and occupied by substantial farmers.

To the ninth interrogatory on the part of the plaintiffs he answers as follows: I think there are no lands in the neighborhood to be bought at fair prices.

To the tenth interrogatory on the part of the plaintiffs he answers as follows: I cannot answer this interrogatory; I do not know.

To the eleventh interrogatory on the part of the plaintiffs he answers as follows: I know nothing at all about that sale; I never saw any advertisement.

To the twelfth interrogatory on the part of the plaintiffs he answers as follows: I don't know any other matter or thing material to the complainants. I have answered fully.

To the first cross interrogatory on the part of the defendants he answers as follows: That he knows nothing at all relative to the matters referred to in this cross interrogatory.

To the second cross interrogatory on the part of the defendants he answers as follows: That he knows nothing at all of the subject of this interrogatory, and so he has said in answer to the plaintiffs' interrogatories upon this subject.

To the third cross interrogatory on the part of the defendants he answers as follows: There has been a considerable increase in the value of real estate near Catawissa since the year 1833, caused by the making and completion of the public improvements in that neighborhood. I know nothing of the incorporation of any Susquehanna Canal Com-

(James Pleasants.)

pany. The State of Pennsylvania made the North Branch canal, running near the land in question.

To the fourth cross interrogatory on the part of the defendants he answers as follows: I know nothing at all about the sale, or any of the matters referred to in this cross interrogatory.

To the *sixth* cross interrogatory on the part of said defendants he answers as follows: I do not know of any other matter or thing material to said defendants. I have answered fully all I know.

M. FORNWALD.

Sworn and subscribed before me.

JAMES PLEASANTS,
Commissioner.

Endorsed—Circuit court, Cohen and al. vs. Gratz and al. Commission e. p. compl'ts, to Catawissa, Pennsylvania. Filed 6 December, 1841. $2 40.

COHEN et al.
vs.
GRATZ et al.
No. 1. In equity.

Circuit court, April session, 1839.

Interrogatories to be administered to witnesses to be produced, sworn or affirmed, and examined on behalf of the complainants under a commission to Swineford Town, Union county, Pennsylvania.

Interrogatory 1st. Do you or do you not know the parties, complainants or respondents, any or which of them; and how long have you known them, or either of them?

Interrogatory 2d. Have you or have you not any knowledge of certain tracts or parts of tracts of land, situate in Union, Juniata, or Mifflin counties, or either of them, late the property of Joseph Simon, deceased, the title whereto has been claimed since February or April, 1833, by Simon Gratz, or his alienees; do you or do you not know the value of those lands, or any part of them, in February or April, 1833, or at any time since, or at the present time? If aye, state your knowledge, and particularly the value of them, or any part thereof, at the time of the sale made by Simon Gratz, or his executors, or by the agent of him or them. State the situation of those lands, their quality, the improvements thereon in February, 1833; what public roads, if any, are contiguous thereto, and the sales made thereof, and to whom.

Interrogatory 3d. Have you or have you not any knowledge of the price or value of the lands adjoining the tracts belonging to Joseph Simon's estate? If aye, state your means of knowledge, and what sales have been made at, or about, or since February, 1833; at what terms, at what prices, and to whom.

Interrogatory 4th. Were or were not the sales made by Simon Gratz, or his executors, or his or their agents, affected at public or private

sales; were or were they not advertised for sale; were or were not any persons interested in those sales, directly or indirectly, either in whole or in part, other than the purchasers named in the deed; and was there any agreement, either written or verbal, that any other person should at any time become in any way interested? If aye, state the name of such person or persons, and the nature and amount of his or their interest.

Interrogatory 5th. If you know any thing further material or advantageous to the complainants, state your knowledge as fully as if you had been thereto more particularly interrogated.

Commissioner for complainants, Absalom Swinefred, esq.

The complainants have entered a rule for a commission to Swineford Town, Union county, Pennsylvania, in conformity to the order of the court of May 14, 1841, and herewith furnish you with a copy of the interrogatories filed, and with the name of the commissioner on the part of the complainants. You will please to take notice that unless cross interrogatories are filed, and commissioners named on behalf of the respondents, within fifteen days, the said commission will issue ex parte. Yours, respectfully,

BENJ. TILGHMAN,
THOS. A. BUDD,
For complainants.

Endorsed—"No. 1, circuit court, April S., '39. Cohen et al. vs. Gratz et al. Equity. Interrogatories, &c. The complainants enter a rule in the above case for a commission to Swineford town, Union county, Pennsylvania, on fifteen days' notice, in conformity with the order of the court of May 15th, 1841.

BENJ. TILGHMAN,
THOMAS A. BUDD,
For complainants.

Jan. 27, '42.—Filed 27th Jan'y, 1842."

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, April session, 1839.

SAMUEL M. COHEN and Eleazer L. Cohen, citizens of the State of New Jersey,
vs.
SIMON GRATZ, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah Cohen, Abraham M. Cohen, and Joseph S. Cohen, citizens of the State of Pennsylvania. } No. 1. Equity.

The President of the United States, to Absalom Swineford, [L. S.] esquire, commissioner named by and on behalf of the complainants.

Know ye, that in confidence of your prudence and integrity, we

have given unto you, and by these presents do give unto you, as aforesaid, full power and authority, in pursuance of a rule lately made in the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain action in equity therein depending, wherein the said Samuel M. Cohen and Eleazer L. Cohen are complainants, and the said Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen defendants, to call before you, at a certain day and place by you for that purpose to be appointed, all and every person and persons who may be named to you by the said complainants as witnesses in the said action, and then and there to examine them, on their respective oaths and affirmations, on certain interrogatories hereunto annexed, touching the premises, and to reduce their testimony to writing; and when you shall so have done, you are to send the same to the said circuit court, closed up, and under your seals, plainly and distinctly set, together with this writ.

Witness the honorable Roger B. Taney, chief justice of the supreme court of the United States, at Philadelphia, this seventh day of January, A. D. 1842, and in the sixty-sixth year of the independence of the said United Sates.

FRA'S HOPKINSON,
Clerk circuit court.

Circuit court, April session, 1839.

COHEN et al. vs. GRATZ et al } No. 1. In equity.

Interrogatories to be administered to witnesses to be produced, sworn or affirmed, and examined on behalf of the complainants, under a commission to Swineford town, Union county, Pennsylvania.

Interrogatory 1st. Do you or do you not know the parties, complainants or respondents, any or which of them; and how long have you known them or either of them?

Interrogatory 2d. Have you or have you not any knowledge of certain tracts or parts of tracts of land, situate in Union, Juniata, or in Mifflin counties, or either of them, late the property of Joseph Simon, deceased, the title whereto has been claimed since February or April, 1833, by Simon Gratz or his alienees; do you or do you not know the value of those lands, or any part of them, in February or April, 1833, or at any time since, or at the present time? If aye, state your knowledge, and particularly the value of them, or any part thereof at the time of the sale made by Simon Gratz or his executors, or by the agent of him or them. State the situation of those lands, their quality, the improvements thereon in February, 1833, what public roads, if any, are contiguous thereto, and the sales made thereof, and to whom?

Interrogatory 3d. Have you or have you not any knowledge of the price or value of the lands adjoining the tracts belonging to Joseph Simon's estate? If aye, state your means of knowledge, and what sales have been made at or about or since February, 1833; at what times, and at what prices, and to whom.

Interrogatory 4th. Were or were not the sales made by Simon Gratz or his executors, or his or their agents, effected at public or private sales; were they or were they not advertised for sale; were or were not any person or persons interested in those sales, directly or indirectly, either in whole or in part, other than the purchasers named in the deed; and was there any agreement, either written or verbal, that any other person should at any time become in any way interested? If aye, state the name of such person or persons, and the nature and amount of his or their interest.

Interrogatory 5th. If you know any thing further, material or advantageous to the complainants, state your knowledge as fully as if you had been thereto more particularly interrogated.

Commissioner for complainants, Absalom Swineford, esq.

A true copy from the original, filed February 18, 1842.

FRA'S HOPKINSON,
Clerk circuit court.

Endorsed "A A," circuit court, Cohen et al. vs. Gratz et al. Commission e. p. complainants to Swineford town, Union county, Pennsylvania. The execution of this commission appears in a certain schedule hereto annexed.

ABSALOM SWINEFORD, *Com'r.*

Returned and filed 26th April, 1842. $2.34.

Circuit court of the United States.—In equity.

COHEN et al.
vs.
GRATZ et al.

Interrogatories for witnesses to be produced and examined under a commission issued by defendants to Beaver town, Union county, Pennsylvania.

Interrogatory first. Do you know the parties, plaintiffs and defendants, in this suit; if yea, how long have you known them or either of them?

Interrogatory second. Have you any knowledge of certain tracts of land, or parts of certain tracts of land, situate in Union, Juniata, Mifflin, and Columbia counties, or either of them, late the property of Joseph Simon, deceased, the title whereto, since February, 1833, has been in Simon Gratz, or his alienee; do you or not know the value of these lands or any part of them in February or April, 1833, or at any time since, or at the present time? If yea, state your knowledge, particularly your means of knowledge, and especially the value of the

1. Papers admitted and read in evidence after objection and argument, are not open to objection before the master.

2. Papers read to the court, without objection, must be taken as sufficiently proved, unless allegation of surprise or mistake is make. In all other cases the master must act according to the reference—these two cases being, from their nature, exceptions to the action of the master.

Upon the exhibits annexed to the bill the master reports that—

Exhibits of bill.

Exhibit A, which is the will and codicils of Joseph Simon, is duly proved by exemplification produced.

Exhibit B, which is an indenture quadrupartite, executed on the 20th March, 1786, between David Franks of the first part, Amos Hayton of the second part, Richard Harris and others of the third part, and Tench Cox and Isaac Hazlehurst of the fourth part, is duly proved by the production of the deed book D, No. 17, page 503, (admitted by court.)

Exhibit C, which is a deed executed on the 16th May, 1793, by Isaac Hazlehurst and Tench Coxe and David Franks to George Davis, was admitted in evidence in court without objection.

Exhibit D, which is a copy of a record of an action of account render instituted by Michael Gratz against Levy Phillips, Leah Phillips, and Bilah Cohen, executors of the estate of Joseph Simon, to the March term, 1807, of the court of common pleas of Philadelphia county, is proved by the production of the authenticated copy of the record.

Exhibit E, which is a copy of a record of an action of account render instituted by Michael Gratz to the March T., 1811, of the supreme court for the eastern district of Pennsylvania, is proved by the production of the authenticated copy of the record.

Exhibit F, is proved by the authenticated copy of the record of an amicable action "case," between the administrators of Michael Gratz, plaintiffs, and the executors of Joseph Simon, defendants, in the court of common pleas of Lancaster county, January T., 1822.

Exhibit G, is proved by the production of the authenticated copy of the record of suit in the common pleas of August T., 1824, removed to the circuit court, and afterwards to the district court for the city and county of Lancaster.

Exhibit H, hereinafter considered.

Exhibit I, which is the affidavit of J. Simon Cohen, sworn and subscribed March 25th, 1833, filed in the court of common pleas of Lancaster county, is proved by the production of the authenticated copy of the record.

Exhibit J. Rule to shew cause, &c., &c., is proved as being part of the authenticated copy of the record of suit in the court of common pleas of Lancaster county, of January term, 1822.

Exhibit K, is proved by the deposition of Simon Gratz, taken before Alderman Ash.

Exhibit L, which is a deed from Leah Phillips to Simon Gratz, his heirs, &c., dated 3d April, 1833, is proved by the production of the original deed.

Exhibit M, which is a certain power of attorney filed in the circuit court of Lancaster, April 8th, 1833, is proved as part of the authenticated copy of the record produced.

Exhibit N, which is a paper purporting to be an account, &c., dated 28th March, 1833, is proved by the deposition of Simon Gratz, before Alderman Ash.

Exhibit O, which purports to be a note addressed by the children of Bilah Cohen to Joseph Gratz and Jacob Gratz, administrators of Michael Gratz, deceased, dated March 29th, 1833, is admitted by the answer of the said Joseph and Jacob Gratz.

Exhibits of answers.

Secondly. What exhibits annexed to the answers are duly proved, together with the proof thereof.

No exhibits are annexed to any answers filed, except to that of Joseph and Jacob Gratz, two of the administrators of Michael Gratz, deceased, and to that of Louisa Gratz, executrix, Edward and David Gratz, and Isaac Prince, executors of Simon Gratz, deceased.

1. As to the exhibits annexed to the answer of Joseph and Jacob Gratz.

Exhibit A, purports to be a letter dated Philadelphia, 16th July, 1837, from Simon Gratz to Mr. Joseph Gratz. No objection offered.

Exhibit B, purports to be a letter dated Philadelphia, July 24th, 1837, from Simon Gratz to Mr. Joseph Gratz. No objection offered.

Exhibit C, purports to be a letter, dated Philadelphia, June 10th, 1833, from Simon Gratz to Messrs. Joseph Gratz and Jacob Gratz, trustees. No objection offered.

2nd. As to the exhibits annexed to the answer of the executors of Simon Gratz.

There are annexed to this answer 21 different papers or documents, all of them purporting to be copies of others in the possession of said respondents; also a paper marked (22,) purporting to be an account copied from the books of Simon Gratz, of sales made, &c., by Ner Middleswarth for and on account of lands. Upon a rule taken by complainants and an order of court made, the executors of Simon Gratz upon the 7th Feb., 1840, deposited with the clerk certain papers purporting to be the originals of the exhibits annexed to their answer, from 1 to 21, inclusive. Respondents however allege, that they are ignorant in whose handwriting many of the papers [are] and how far they are genuine, but that they were found among the papers of Simon Gratz. These papers are accepted by the complainants as evidence in the cause, and are not disputed by the other parties, defendant, except as to some of them, among which is paper No. 14, being substantially the same of which exhibit H of the bill professes to be a copy, or a duplicate original of the same. Of these papers the master reports, that Nos. 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 16, and 17, having been previously admitted in

evidence by the court, were not open to objection before him; and that Nos. 4, 10, 13, 15, 18, 19, 20, 21, 22, were admitted in evidence before the master without objection.

Paper 14.

Upon the paper No. 14, being a paper similar to exhibit H of the bill, the master reports, that objection being taken to it, the regular proof of its genuineness is required. The bill alleges that an agreement was entered into between Simon Gratz and Leah Phillips, dated February 15th, 1833, a copy of which is annexed, marked H; that the said agreement was first discovered by complainants on the 13th June, 1833, when it was produced by Lyon J. Levy on his examination before Michael W. Ash. One of the interrogatories annexed to the bill demands "by whom was the agreement dated 15th February, 1833, a copy of which is annexed, drawn; is that exhibit a true copy, &c., &c.?

Leah Phillips in her answer admits that she entered into an agreement with Simon Gratz, &c., &c., and made a conveyance of lands for $1500; that she delivered to Lyon J. Levy a trunk of papers for Simon Gratz to take such, &c., &c., as should be necessary to carry the conveyance into effect.

Lyon J. Levy answers that he has knowledge of an agreement entered into between Simon Gratz and Leah Phillips, which he believes was entered into on the 15th February, 1833, and he also believes that the exhibit H of the bill is a true copy of the said agreement; that the original agreement was written by Simon Gratz, and was drawn at or about the time it bears date; that the amount was fixed by the agreement of the said parties to the agreement, and of the consideration money therein named, to wit, $1500; $300 was on the 6th April, 1833, paid over, &c., &c., and that he advised Leah Phillips to accept the terms, &c.

The executors of Simon Gratz answer that they are entirely ignorant touching the matters inquired of by the bill, and of the acts or negotiations of the said Simon Gratz with Leah Phillips, but they say, that "among the papers of Simon Gratz were found the following, &c., &c.," but that they "are ignorant in whose handwriting many of the papers are, and how far they are genuine, &c." Among other papers they furnish a copy of what they call a "paper without endorsement, partially in the writing" of Simon Gratz, headed propositions, 13th February, 1833." They subsequently filed, as before stated, the original paper No. 14, as found among the papers of Simon Gratz.

Without proceeding further with the development of the testimony offered by the complainants, the master reports that by the pleadings—

1. As against Lyon J. Levy, exhibit H is a true copy of an agreement entered into between Simon Gratz and Leah Phillips; the original agreement having been written by Simon Gratz.

2. As against the executors of Simon Gratz, exhibit H is, with the exception of its not having at the top the words "propositions, 13th February, 1833," nor in the body of it the words "exceptions filed to

report;"* the word "agreement" instead of "argument," and certain other slight variances not altering the import of the instrument, is a correct copy of a paper found among the papers of Simon Gratz, and partially in his handwriting.

The discrepancies between the paper H, and paper No. 14, slight as they are, in comparison with the substantial resemblances between them, are in the opinion of the master satisfactorily accounted for by an hypothesis founded upon the evidence in the case, and the genuineness of the paper No. 14, adequately proved.

Two witnesses were examined before the master upon this subject, and he annexes true copies of their depositions to this report, marked "B" and "C."

It was argued on behalf of the complainants that paper No. 14 is either a "duplicate," that is, one of the originals, or a copy in the handwriting of Simon Gratz, and signed by him.

In addition to the evidence above given, the deposition of Simon Gratz, taken before Michael W. Ash, esquire, upon the 14th June, 1833, already admitted in evidence by the court, was alluded [to] *it*, as was, in like manner a letter written by Simon Gratz, and annexed to the answer of Joseph and Simon Gratz.

The paper No. 14, therefore, although it may not have been positively proved to be entirely in the handwriting of Simon Gratz, or to have been actually signed by him, is in the opinion of the master sufficiently authenticated by the weight of the testimony to be admitted in evidence in the cause. Indeed, enough was done to effect that purpose when proof was made that Simon Gratz was party and privy to the instrument of writing, a fact not only admitted by the pleadings, not to be denied by counsel, proved by the deposition and letters of Simon Gratz, but unequivocally established by the deposition of John H. Craven, who identifies almost the entire paper, from the commencement to the concluding note at the bottom, as the handwriting of Simon Gratz. The master considers that the effect of this instrument of writing is one thing, the question of its admissibility in evidence another; that with the first he has nothing to do, and that for the latter he is authorized in reporting the paper No. 14 as sufficiently proved.

The master suggests an hypothesis extracted from evidence in the case, which will, perhaps, in a few words, detail the history of this paper. "Paper No. 14 was written and drawn up by Simon Gratz; that the paper produced by Lyon J. Levy before Alderman Ash was a duplicate original of that paper, 14, made from No. 14 by Isaac Prince, under the direction of Simon Gratz; that the duplicate thus made by Prince was handed by S. Gratz to Mr. Levy; and that, upon the 13th February, 1833, Simon Gratz, being at the store of Mr. Levy, and being requested to fix the price, filled up the blank with the sum of fifteen hundred dollars, signed the paper, and gave it back into the custody of Lyon J. Levy, as the representative of Leah Phillips. The

*Note. The omission of the words "exceptions filed to report" are no doubt the mistake of the counsel who drew the bill. O. H.

other paper, (No. 14,) being the rough draft first made by Simon Gratz, received also the proper additions, and was retained by Simon Gratz as his evidence of the arrangement," and was thus found among his papers by his executors, and filed in court.

Other documents.

Lastly, as to any other papers that have been offered in evidence, &c., the master reports the following as competent testimony in the cause: Paper marked B B, being an exemplification of a sheriff's deed, dated 24th August, 1790—Mark Warrington to Joseph Simon.

Paper marked G G, being an exemplification of a sci. fa. in the court of common pleas of Northumberland county.

Paper marked D D, being an exemplified copy of a mortgage from William Trent to David Franks and Joseph Simon.

All which is respectfully submitted.

June 17, 1843. O. HOPKINSON.

Filed 17th June, 1843.

Answer of administrators of Michael Gratz, filed November 1, 1841.—*O. H.*—A.

In obedience to the call of the plaintiffs, the administrators of M. Gratz furnish the following accounts, viz:

1st. Copy of account, Joseph Simon in ac. current with M. Gratz, admitted to have been stated by Simon Gratz, showing a balance of $1,572 97 as due Jos. Simons; the same account continued with the estate of Joseph Simons, exhibiting the above balance to the credit of said estate.

2. Bell Cohen's administration account, (No. 2,) showing the payment to her of $1,572 97 by M. Gratz, being balance of account as settled on 25th September, 1805. After this time the accounts were settled by suits, and the records will show the accounts and their results up to 1831. After this period the whole of these matters were in charge of Simon Gratz; and the surviving administrators of M. Gratz have no papers in relation to them.

3. Copy of account headed No. 1, William Trent, deceased bond and mortgage, debtor to Joseph Simon, dated Lancaster, January 10, 1803, with a letter in which it was enclosed, signed for Joseph Simon, L. Phillips.

4. Copy of account headed No. 2, dr. B. and M. Gratz, general ac. per assignment of D. Franks, deceased, with Joseph Simon.

5. Copy of account headed E, dr. B. and M. Gratz, general ac. per ass't of David Franks, deceased, with Jos. Simon.

Nos. 3, 4, and 5 are accounts sent to B. and M. Gratz by Jos. Simon, as his statement of his claim upon them, but the items were not admitted by them further than they are contained in the account No. 1.

6. Copy of acc't headed Dr., M. Gratz, in ac. current per assign't of David Franks to B. and M. Gratz, which I, Simon, accepted order, Cr.

This ac. was sent by Levy Phillips to Simon Gratz, after death of Joseph Simons, viz., 24 Oct., 1805. It contains various entries which do not relate to Trent's mortgage on the premises acquired under it, and which were either settled in other accounts, or disputed, or are included in the suits which have been decided.

7. Copy of acc't of M. Gratz, expenses on account joint land concern, dated January 23, 1803, signed by S. Gratz.

The foregoing papers contain statements of all the disbursements of which the adm'rs of Michael Gratz have a knowledge, made by Jos. Simons or his executors, or Michael Gratz or his adm'rs, on ac. of lands held in common by said Jos. Simons and M'l Gratz; unless they may be embraced in the proceedings and [placed] upon record in the several suits between the parties.

JO. GRATZ,
JAC. GRATZ.

Nov. 1, 1841.

Sworn to by Jacob Gratz, and subscribed by him before me, this 9th day of November, 1841.

O. HOPKINSON.

And the said respondents further say, that they have in their possession no papers or documents belonging to the estate of Joseph Simons, or appertaining thereto, relating to the lands conveyed by Leah Phillips by the deed of April 3, 1833, to Simon Gratz, to the best of their knowledge and belief.

JAC. GRATZ,
JO. GRATZ.

Sworn and subscribed this 13th of Nov., 1841, before me.

O. HOPKINSON.

B.

Copy of deposition of Ishi H. Craven.

Ishi H. Craven, a witness produced, affirmed, and examined on the part of complainants, says, I know the handwriting of Simon Gratz. (Paper No. 14 is shown him.) The signature is different from any signature of his that I have seen. All the signatures almost that I ever saw of Simon Gratz's were written in full. The whole of the paper from the top to the words "the blank to be filled," I believe, to the best of my knowledge, to be Simon Gratz's handwriting. The name of Simon Gratz in the body of the instrument is written in the manner that said Simon signed his name. I believe that signature to be his handwriting. As to the signature at the bottom, I should suppose it was his, but should not like to testify to the fact. I have seen his signature with the S like the one in the body, but not like the S in the lower signature. I think there can be no doubt that the words "Feb'ry 13, 1833," were written by him. I am of opinion that they are in his handwriting. He wrote a uniform, plain hand—no signature like that at the bottom. The words at the foot, "copy says agreement,

instead of argument," are in his handwriting. The words "order, Mr. N. Middleswarth, dr., Anderson," are in his handwriting. I have seen his signature to his check very frequently, and sometimes on his notes. (Witness is shown paper No. 12—the agreement of 1842.) Endorsement is in his handwriting.

Cross examined: My general familiarity of Simon Gratz's writing was with his signature. I think I have seen him write. I don't remember particularly what I have seen him write.

(Signed) J. H. CRAVEN.
Attest: O. HOPKINSON.

"C."

Copy of deposition of Samuel Henry.

Samuel Henry, sworn, aged about 44, of the city of Philadelphia, No. 74 south Third street, a witness produced, sworn, and examined on the part of complainants, says: I am acquainted with Mr. S. Gratz's handwriting during the last five years of his life. I have seen him write his name. (Paper H No. 14 is shewn to him.) I should not take that to be his signature. I think he signed his name Simon Gratz; this is only S. Gratz. I should not say this is his handwriting; it is so dissimilar to any thing I have ever seen of his writing. "Simon Gratz" in the seventh line from the top, is the nearest of any I have seen to his handwriting. I am not acquainted with the general character of his writing; only his signature. I form my opinion from a very vivid recollection of his signature. I had an opportunity of seeing his name—his signature—almost every day. He always, I think, wrote it Simon Gratz. (Witness is shewn name of Simon Gratz, endorsed on deed 24th April, '33, No. .) I would not be willing to swear this is his writing. (Deed 3d April, 1833, No. 16, is shewn witness.) That signature of Simon Gratz is more familiar, but not so much so as the Simon Gratz in the seventh line of paper No. 14. If I could see a check or note of Simon Gratz's, I could tell. (Cross examination declined.)

COHEN et al.
vs.
GRATZ et al.

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in equity, April session, '39.

To the honorable the judges of the said court.

The undersigned, to whom as master the above case was referred, upon a certain order dated the day , 184 , respectfully reports:

That the evidence upon both sides closed upon the 22d December, 1842; it being agreed that the master should frame his report and submit it to the counsel, to hear an argument on any suggestions that might be offered upon either side prior to his engrossing it for filing.

Upon the 7th June, 1843, a meeting was held for said purpose; but no alterations of the master's report were contended for, and he was desired to prepare it for submission to the court as soon as possible. A meeting was held by Mr. Cohen, Mr. W. B. Reed, and the master, upon the 9th of June, for the purpose of looking over some letters supposed to contain evidence as to some matters referred. This meeting, after progress, adjourned sine die, and the master proceeded with the engrossing his report, and completed the portion of it relating to the value of the lands before the 14th June, 1843, upon which day Mr. Reed called upn the master, and requested him to call a meeting for the next day at 10 a. m., to examine witnesses e. p. respondents, as to the value of the Columbia county lands. This was done, and upon the 15th June, 1843, a meeting was held; whereupon Mr. Reed offered his witnesses for examination. This was opposed on the part of the complainants, and an argument ensued between Messrs. Reed and Williams, and Budd and Tilghman. Mr. Reed also proposed to prove an account. This account was admitted in evidence by complainants; they stating that they understood Mr. Reed to declare that, if the account were admitted in evidence, he would not press the examination of the witnesses. Mr. Reed, however, saying that he had been misunderstood, still demanded to have the witnesses examined. Against this motion, it was contended that the matter was closed, and further that the master had no power to take depositions except in proof of papers.

The master decided that he had power, under the order of reference, to take depositions, but that it was a matter of another character if the offer were out of season. He recapitulated the facts set forth in this report, and decided that it was now too late to introduce new testimony after his report was framed; that it was not a case where he would seek evidence to satisfy his own mind as to the matters referred to him, because there was already in the case direct evidence upon the subject; that if the default of testimony arose from the neglect or mistake of counsel, it was the subject matter of an appeal to the courtesy of the other side; but that, as it did not appear that such was the fact here, the evidence could not be taken.

Lest, however, the decision of the master should be erroneous, he expressed his desire that the depositions should be taken, (under objection by complainants,) and the matter submitted to the court, as thereby much time and some expense would be saved.

The depositions are hereto annexed, marked A.

All of which is respectfully submitted.

June 21st, 1843. O. HOPKINSON, *Commissioner.*

COHEN et al. } A.
vs.
GRATZ et al. }

Depositions of witnesses taken e. p. defendants, de bene esse, under objection and protestation by complainants.

George H. Willits, aged about 40 years, a witness produced, af-

firmed, and examined, on the part of defendants, says: I live in Columbia county, in the township of Uniontown, opposite Cattawissa. I have some knowledge of three adjacent tracts of land at Cattawissa, sold by Simon Gratz to George A. Frick and William G. Hurley. I have known the lands ever since I was old enough to know any thing. I was raised within two miles of them, in Cattawissa. I am a tanner and currier by profession, but I have not followed it for ten years. I am a farmer now. If I were going to value them now, at this time, I should say they were worth $10 an acre, with the improvements on them. I think they might be sold for that. The improvements are a new frame barn, a frame dwelling-house; and there *is* a new frame wagon-house and a new spring-house. These improvements have been put on, all of them, since Messrs. Frick and Hurley bought the property. At the time they were offered to sale by, I think, Mr. Middleswarth, they were worth about five dollars per acre. At present, if the improvements were not on them, I think they would bring about the price they sold for at first. In 1833, I should think they were worth about the same. I have heard men speaking of them, and I never heard them value them higher than $5, taking the body of them together. Some of the land is not fit for cultivation, perhaps about 75 acres, but I cannot designate the quantity. I own some land along the river, and I did own some adjoining these three tracts, [or] rather I was part owner. I disposed of my interest in them some five or six years ago. I did not make a money sale—exchange. I had offered my tract for sale for $5 per acre, but there was more waste land in mine than there was in those.

Cross examined by master.

The house and barn cost, I suppose, about $1200; the wagon-house, Mr. Hurley told me, cost $90.

Cross examined by Mr. Tilghman.

My tract was only 177 acres; it was ridge land; it was on the west side of these three tracts. I also own on the river. We call the three tracts ridge land. They are not in the valley; they *lay* between the river Susquehanna and the Mahoning valley, on the ridge between them. They are the most of them a body of level lands. There was a good deal of my 175 acres—at least 100 acres of it—that could not be cultivated. The heavy timber of the improvements was procured from the premises. These three tracts were reasonably well timbered, but not of a very valuable kind—yellow pine, pitch pine, oak, chestnut. The soil is not a bad soil, if properly cultivated—yellow gravel, some red shell. It is good wheat land, when it is first cleared. It *lays* within about 2½ of lime—that is, where lime can be procured. I think it is a soil on which lime acts favorably as a manure. My lands on the river run within ¼ a mile of these tracts; I own a river and a ridge tract. The river tract is about 130 acres—the river part of it. My river tract I gave 40 dollars an acre for five years ago; I allowed that for it. I took this place for exchange for the other property in part, and this was the appraised value.

Re-examined by Mr. Reed.

At the time of the appraisement of my river tract, there were on it three dwelling-houses and two barns; one of the dwellings was a frame house, new, with a stone kitchen; another cost $500. The estimate of $40 included the improvements; but I was also to pay $250 in addition, on account of that house. I could sell my tract a great deal easier at $40 than I could that whole tract at $5; that is, before the improvements were put on it.

Re-cross examined.

I have not been negotiating for the purchase of these lands. At one time I came to the conclusion that, if I had the money, I would buy these lands at five dollars; but for the last ten years I should have arrived at no other conclusion but that the lands were worth five dollars per acre.

GEO. H. WILLETS.

Affirmed and subscribed, this 15th day of June, 1843, before me,
O. HOPKINSON, *Master*.

16th June, 1843.—John Rhodes, aged about 56, a witness produced, sworn, and examined on the part of the defendants, deposes and says: I live in the town of Danville, Columbia county; I have lived in that county since 1797; it was then Northumberland. I was sheriff; I was elected in 1825, from 1825 to 1828. I know the lands that belonged to Mr. Gratz, and were sold to Messrs. Frick and Hurley. I know them well. At the time of the sale, in 1837, to Frick and Hurley, I should not have considered them worth more than $5 an acre. I went to look at them before that, in 1830 or 1831, and I would not have given 5 dollars an acre for them. The character of the land is what I call poor hill ridge land. When I went to look at them in 1830 or '31, the buildings that were on them were of no consequence, and the land that was cleared was worn out. In 1833 I should consider their value about the same. I don't know that there was any difference. Their value, at present, is more. There has been buildings put on them, and considerable lime; that was since Frick bought; they are worth more now. I shouldn't be willing to pay now more than $9 to $10 per acre.

Cross examined by Mr. Tilghman.

I was first called on to be a witness in this case, on Sunday or Monday last, by Mr. Daniel Gratz. I was not subpœnaed. Mr. Frick lives in the town of Danville. At present I am keeping a public house in Danville, and farming some. These lands are, perhaps, a mile and a half from the river, that is, where the buildings are; from the buildings to the outside line of the tract, towards the river, is about 50 to 60, or 80 rods. I should call it, from the nearest point of the lands to the town of Cattawissa, about a mile and a half. The main road from Danville to Bloomsburg does not run through it. There is no public road from

Danville running exactly through it; from the road, in the valley, to Cattawissa, there is a road that crosses these lands. You can't call these lands level, but they are tolerably level; what we call rolling ground. I always understood there were more than 400 acres, somewhere about 425. When I first went to see them there were on them a barn and a house, and a kind of shed. The lands are within 2 or 2½ miles of lime-kilns; lime suits on ridge lands pretty well. These lands are only middling well wooded; the first crops of wheat, after it was cleared, I saw were tolerably fair; after that they require to be clovered and limed to get them up. Afterwards, after viewing these lands, I agreed for another place, river bottom, near Bloomsburg, 106 acres all river bottom. I was to pay 40 dollars an acre. The lands of Frick and Hurley look now as if they would make tolerable good farms of them, by liming and clovering; but some of the old fields *are* bad yet, when I saw them last.

Re-examined by Mr. Reed.

These Gratz lands are very different from the bottom lands, which I spoke of; the Gratz lands are worse than the other.

JOHN RHODES.

Sworn and subscribed, this 16th June, 1843, before me,

O. HOPKINSON, *Master.*

Daniel Hoats, aged about 40 years, a witness produced, sworn, and examined on the part of defendants, says: I live, at present, in Union county, about 30 miles from these lands. I have lived in Union county since last April a year. Before that I lived in Columbia county, about 2 miles from these lands. I lived there about 30 years. My business there was a carpenter, and done a little farming. I know these lands spoken of. They are now worth something like $9 or $10 per acre. When Mr. Frick and Hurley bought them, they were worth about $5 an acre; that was in 1836 or 1837. The difference in value arises from the improvements. I built the house and barn. The house and barn cost about $800, he furnishing the timber. In 1833, the value was about the same as in 1836–'7. My father owned a farm, about 1½ mile from *the* these lands. I considered our farm the best; ours is sold; it was sold in 1837–'8; perhaps it was in 1836; it was 218 acres. We sold it for $1,800. There was on it an excellent barn; the house was not so very good, worth about $300 or $400; 8 or 9 acres of orchard. The improvements on our farm were worth something like $1,200 or $1,400. Of these (Gratz's) lands, the timber land is more valuable than the cleared land. The condition of the cleared land, as to soil, was poor, reduced. I speak of the time those gentlemen bought. There is something like 300 acres of timber land on it.

Cross examined by Mr. Wighman.

I was called on by Mr. David Gratz on Saturday or Monday, to come as a witness. I came with him; in company with us was Mr. Frick, Mr. Rhodes, Mr. Willets, and, I think, some strangers, but not with

us. I reside in West Buffalo township, near New Berlin. Of the Gratz lands, there is some level; it is rolling land. There is about 100 acres of the land which Frick and Hurley bought, which are not capable of cultivation.

On these 100 acres there is some light timber; all of it was light. I got the heavy timber of which the house and barn were built off the farm by a good deal of searching. I think I got all the heavy timber off the farm that was used in the buildings. There might be found enough timber for another house and barn, by splicing it. I do not think that without splicing it enough heavy timber could be found on it to build another house and barn like that. The barn which I built was 36 by 60 feet. I don't call this land good wheat land; they raise [on] it pretty good crops, after it is put in order with lime, &c. The land is about 2 miles, or perhaps three, from lime-kilns. I have seen farms since those gentlemen had them under cultivation. I don't call it a good farm. The lands are within a mile and a half of the river, and about the same from Catawissa.

DANIEL HOATS.

Sworn and subscribed, this 16th day of June, 1843, before me,
O. HOPKINSON, *Master*.

George A. Frick, aged about 50 years, a witness produced, sworn, and examined on the part of defendants, says: (sworn first, on his voir dire.) I purchased this land of Mr. Gratz; that is, Mr. Hurley and myself bought it together, and I still claim to be owner. I bought it in 1837, I believe. I bought it in the name of Simon Gratz. I think I had a letter from him, containing an offer at the price at which we bought. When I got the letter, I wrote to Mr. Hurley to meet me near the land. I think I answered Mr. Gratz's letter and accepted the offer. I had no personal interview with S. Gratz at that time. I am not confident whether I wrote to S. Gratz or to my brother Jacob; the business was arranged for getting the deed, the money paid by my brother, Doctor Jacob Frick, in this city. I think the purchase was to be cash at once in hand, and it was paid in a very few days; no delay for raising money or any thing of the kind. I had no knowledge then about the claim of the Cohens. I trusted to Mr. Gratz's responsibility, and took a general warranty deed. I couldn't come to the city to examine the title, and I didn't think Mr. Gratz would sell or give a general warranty for what he had no title to. I have not brought my deed with me. I think Mr. Hurley has it. The warranty was contained in the deed. I do not know that my brother knew of any claim of the Cohens; he had no other agency, except to receive the deeds, and pay over the money. I think I heard at the time I was going up to put up the buildings, that there was some person over at the iron works looking up the lands. I don't recollect whether it was Mr. Lessic or Mr. Leavonsworth, that I heard was looking them up. This must have been at least a year after we bought. There was a tenant on when we went to take possession.

(Competency of witness objected to.)

Sworn in chief. (It is agreed that if the exception be overruled, the testimony on the voir dire be read as part of testimony in chief.)

I gave four dollars an acre for that land. That land at that time, and for years before, I considered worth $5 to a person who would go on it and farm. Since then, I have put on a house and barn and wagon house and spring house. The house is frame; there have been 5,000 bushels of lime put on; this information as to the quantity of lime I have from Mr. Hurley. Lime at the kiln is $8 per hundred, or 8 cents per bushel; but the last 1,200 bushels was 7½ cents. I can't say how much it is delivered on the farm; it is a very bad road, a hilly road; but solid; the road to the kiln I mean. In 1833, Mr. Gratz came to Danville, and I had the offer, Mr. Woodside and myself, of this land at five dollars an acre. I at that time went on the land with Mr. Gratz, and afterwards went on it again with Mr. Woodside. We then refused to take it at $5, and offered $4. If I recollect right, Mr. Gratz asked me to get a purchaser at $5. He would not in 1833 take our offer at $4. The consideration of our purchase in 1837 was $2,100, and the tract was called 525 acres. The land in the woods when I purchased was considered more valuable than that which was cleared, because the latter was worn out, and would require more expense to bring it up than to clear the woods. Since the purchase we have cleared fifty acres. We gave the timber and the two first crops for the clearing; they fencing it out of the timber on the land. The best of the timber had been destroyed before we got it. There is white oak and pine on it—pitch pine; no yellow pine, I think.

Cross examined by Mr. Budd.

I was first requested last Sunday to come down here. I came on Tuesday. I do not know that I have the letter from Mr. Gratz. It was in the spring or the forepart of the summer of 1833 that Mr. Gratz came to Danville. I live in Danville.

GEORGE A. FRICK.

Sworn and subscribed, this 16th day of June, 1843, before
O. HOPKINSON, *Master*.

Among the records in the recorder's office in the county of Columbia, it is thus contained:

Simon Gratz, deed to William G. Hurley and G. A. Frick. In deed book G, page 244.

This indenture, made this seventeenth day of May, A. D. 1837, between Simon Gratz, of the city of Philadelphia, merchant, of the one part, and William G. Hurley and George A. Frick, of Columbia county, Pennsylvania, of the other part, witnesseth: That the said Simon Gratz, for and in consideration of the sum of twenty-one hundred dollars to *them* in hand well and truly paid by said William G. Hurley and George A. Frick, at and before the ensealing and delivery

hereof, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and confirmed, and by these presents do grant, bargain, sell, release, and confirm, unto the said William G. Hurley and George A. Frick, and to their heirs and assigns, all those contiguous tracts of land situate in Hemlock township, in Columbia county aforesaid, bounded and described as follows, to wit:

Beginning at a hickory, a corner of land surveyed in the name of D. Whitmore; thence north 83½ degrees east, two hundred and six perches, to a black oak; thence north 71 degrees east, three hundred and thirty-eight perches, to a white oak; thence north nineteen degrees west, two hundred and twelve perches, to a dog wood, formerly a white oak; thence south 71 degrees west, two hundred and sixty perches, to a post; thence south 13 degrees east, one hundred perches, to a white oak; thence by land surveyed for Sarah Zane; south 77 degrees west, three hundred and twenty perches, to a ; thence by land surveyed for Elijah Wahersham, south 41 degrees east, one hundred and seven perches, containing five hundred and twenty-five acres and allowance, be the same more or less, (two of the said tracts being taken upon warranty in the name of Levi Andrew Levi, and the other in the name of Michael Gratz, and *served* the 9th July, 1774, and patented to Levy Andrew Levy, and now by sundry conveyances duly executed; the title to said lands is vested in said Simon Gratz in fee simple; together with all the improvements, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate of the said Simon Gratz, in law, equity, or otherwise, howsoever, of, in, to, or out of the same.

To have and to hold the same to the said William G. Hurley and George A. Frick, and their heirs, to and for the only proper use and behoof of the said William G. Hurley and George A. Frick, their heirs and assigns, forever. And the said Simon Gratz, for himself, his heirs, executors, and administrators, doth, by these presents, covenant, grant, and agree, to and with the said William G. Hurley and George A. Frick, and their heirs and assigns, that he, the said Simon Gratz and his heirs, all and singular the lands, hereditaments, and premises herein above described and granted, or mentioned or intended so to be, with the appurtenances, unto the said William G. Hurley and George A. Frick, and their heirs and assigns, against him, the said Simon Gratz, and his heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same, or any part or parcel thereof, shall and will warrant and forever defend.

In witness whereof the said parties have hereunto set their hands and seals the day and year aforesaid.

SIMON GRATZ. [SEAL.]

Sealed and delivered in the presence of us—
JACOB FRICK,
M. MCMICHAEL.

Received the day of the date of the above indenture, of the above named William G. Hurley and George A. Frick, the consideration money above mentioned in full.

SIMON GRATZ.

Witness *a* signing—M. McMICHAEL.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

Before me, an alderman in and for said county, personally came Simon Gratz, and in due form of law acknowledged the foregoing instrument to be his act and deed, and desired the same might be recorded as such.

Witness my hand and seal this seventeenth day of May, one thousand eight hundred and thirty-seven.

MORTON McMICHAEL. [SEAL.]

Recorded June 23d, A. D. 1837.

H. W. THORNTON, *Dep. Reg.*

COLUMBIA COUNTY, *ss.*

I, Charles Conner, recorder of deeds, &c., in and for the [L. S.] county of Columbia, do hereby certify, that the above and foregoing is a true and exemplified copy of a deed from Simon Gratz to William G. Hurley and George A. Frick, as the same remains of record in deed book G, page 244, in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the said office, at Danville, this 12th day of June, anno domini eighteen hundred and forty-three.

CHARLES CONNER, *Rec'r.*

The word "Sen.," on page first, interlined (line 29th) before the above certificate was made.

CHARLES CONNER, *Rec'r.*

Afterwards, to wit, on the 27th June, A. D. 1843, affidavit of Lyon J. Levy is presented in the words following, to wit:

COHEN
vs.
GRATZ.

Circuit court, U. S., in equity.

Lyon Joseph Levy, being duly sworn, says, that on the 23d day of June, 1843, there came to his knowledge the existence of certain papers in a trunk in a garret room of a house recently occupied by him, of which he had been theretofore wholly ignorant. On said day, his partner, Charles C. Guigan, informed him that there were in the garret, among other things, two trunks, to which he called deponent's attention. One of them did not contain any thing relative or material to this suit; the other contained papers and documents which deponent believes to be relating or material to this case. He immediately in-

formed his counsel (Henry M. Phillips) of the facts; and he advised him to ask the order of court as to the disposal of said papers. Depoent has no recollection nor knowledge of the time when, nor the means how, the said trunk and its contents came into his said late dwelling, and he verily believes they were put there without his knowledge. He also states that, as he verily believes, no part of the said contents has been removed.

LYON JOSEPH LEVY.

Sworn and subscribed, June 26, 1843, before me.

JOEL COOK, *Ald'n.*

COHEN
vs.
GRATZ.

And now, June 27th, 1843, upon hearing an affidavit made by Lyon J. Levy, on motion of B. Tilghman and T. A. Budd, for the complainants, it is ordered that the trunk and all the papers and documents referred to in the said affidavit shall be forthwith delivered, by the said Lyon J. Levy, to Oliver Hopkinson, esq., the master in this case; and that the said trunk, papers, and documents be, by the said master, examined and numbered, and that he report a schedule of them to this court.

Afterwards, to wit, on the 18th July, 1843, the administrators of Michael Gratz make and file in said court the following exceptions, to wit:

Circuit court of the United States, for the eastern district of Pennsylvania, April sessions, 1839, No. 1, in chancery.

COHEN et al.
vs.
GRATZ et al.

Exceptions taken by Joseph and Jacob Gratz, surviving administrators of Michael Gratz, deceased, defendants in the above case, to the report of Oliver Hopkinson, esquire, one of the masters of the said court, sitting as a court of chancery, to whom the said cause was referred in pursuance of a decree made 14th May, A. D. 1841, which report is dated the 17th day of June, A. D. 1843, and filed 19th.

1st exception. For that the master reports that he has received no materials for stating the accounts, by the 1st and 2d items of the order of court of 14th May, 1841; whereas he ought to have reported that the records of the various suits and judgments, in which the administrators of Michael Gratz and the executors of Joseph Simons were parties, furnish the evidence of the same.

2d exception. For that the master refused to receive in evidence certain papers, numbered from 1 to 6, offered by the surviving administrators of Michael Gratz; whereas he should have received the same.

3d exception. For that the master reports it is uncertain whether any portion of the verdict for $3,528.92, recovered by the executors of J. Simons vs. John Wicks, was received by Simon Gratz; whereas he should have reported, from the evidence, that no portion of such sum was received by the said Simon Gratz, or chargeable to him.

4th exception. For that the master reports the value of the Union county lands at seven dollars per acre in 1833; whereas he should have certified their value at the actual sales, or less, with allowance for charges and disbursements.

5th exception. For that the master reports the value of the Columbia county lands, in 1833, at twenty dollars per acre; whereas he should have reported the same at four dollars an acre on the actual sales.

6th exception. For that the master refused to receive and embody in his report the testimony offered on the part of the defendants, as to the value of the Columbia county lands; whereas he should have received the same.

7th exception. For that the master reports the value of the lands in 1841 at $12 per acre for Union county, and $25 for Columbia county.

8th exception. For that the master reports that, in ascertaining the disbursements of Simon Gratz on account of the lands, he has rejected, as imperfect, indefinite, and unsatisfactory, the deposition of Ner Middleswarth and the correspondence of Middleswarth and Simon Gratz.

9th exception. For that the master reports that, as against the executors of Simon Gratz, exhibit H is duly proved.

10th exception. For that the said master's report is generally incorrect and liable to exception.

The defendants, in filing these exceptions, expressly reserve the right of filing further exceptions, should the same become necessary after the examination of the trunk of papers now referred to the master, which has been discovered in the possession of Mr. Lyon J. Levy since the filing of the said report, of the existence and contents of which they had and have no knowledge.

HENRY J. WILLIAMS,
Att'y for adm'rs of M. Gratz.
Per J. W. BIDDLE.

Circuit court of the United States, for the eastern district of Pennsylvania, April session, April, 1839, in chancery.

COHEN et al.
vs.
GRATZ et al.

Exceptions taken by Louisa Gratz, Edward Gratz, David Gratz, and Isaac Prince, executors of Simon Gratz, defendants in the above case, to the report of Oliver Hopkinson, esquire, one of the masters of the said court, sitting as a court of chancery, to whom the said cause was referred in pursuance of a decree made 14th May, A. D. 1841, which report is dated the 17th day of June, A. D. 1843, and filed 19th.

1st exception. For that the master reports that he has received no

materials for stating the accounts, by the 1st and 2d items of the order of court of 14th May, 1841; whereas he ought to have reported that the records of the various suits and judgments, in which the administrators of Michael Gratz and the executors of Joseph Simons were parties, furnish the evidence of the same.

2nd exception. For that the master refused to receive in evidence certain papers, numbered from 1 to 6, offered by the surviving administrators of Michael Gratz; whereas he should have received the same.

3d exception. For that the master reports that it is uncertain whether any part of the verdict for $3,528 $\frac{23}{100}$, recovered by the executors of J. Simons vs. J. Wicks, was received by Simon Gratz; whereas he should have reported from the evidence that no portion of such sum was received by the said Simon Gratz, or is chargeable to him.

4th exception. For that the said master reports the value of the Union county lands at seven dollars per acre in 1833; whereas he should have certified their value at the actual sales, or less, with allowance for charges and disbursements.

5th exception. For that the masters reports the value of the Columbia county lands, in 1833, at 20 dollars per acre; whereas he should have reported the same at 4 dollars an acre, or the actual sales.

6th exception. For that the master refused to receive and embody in his report the testimony offered on the part of the defendants, as to the value of the Columbia county lands; whereas he should have received the same.

7th exception. For that the master reports the value of the lands in 1841 at $12 per acre for Union county, and $25 for Columbia county.

8th exception. For that the master reports that, in ascertaining the disbursements by Simon Gratz on account of the lands, he has rejected as imperfect, indefinite, and unsatisfactory, the deposition of Ner Middleswarth and the correspondence of Middleswarth and Simon Gratz.

9th exception. For that the master reports that, as against the executors of Simon Gratz, exhibit H is duly proved.

10th exception. For that said master's report is generally incorrect and liable to exception.

The defendants, in filing these exceptions, expressly reserve the right of filing further exceptions should the same become necessary. After the examination of the trunk of papers now referred to the master, which has been discovered in the possession of Mr. Lyon J. Levy since the filing of said report, of the existence and contents of which they had and have no knowledge.

REED & MEREDITH,
For executors of S. Gratz.

July 18, 1843.

2015.

In the circuit court of the United States, for the eastern district of Pennsylvania, April sessions, 1839.

COHEN et al.
vs.
GRATZ et al. } No. 1. In equity.

The complainants except to the report of the master, Oliver Hopkinson, esq.:

1st. Bcause the master erred in estimating the Union county lands, in 1833, at $7 per acre, being much less than according to the evidence the said lands were really worth.

2nd. Because the master erred in estimating the value of the Union county lands, *on* 1841 and 1842, at $12 per acre, that being much less than their real value according to the evidence.

THOMAS A. BUDD,
BENJ. TILGHMAN,
For complainants.

Afterwards, to wit, on the tenth day of October, the master under reference of 27th June, 1843, files the following report:

In the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit.

COHEN and al.
vs.
GRATZ and al. } In equity.

1833, June 27th, affidavit of Lyon J. Levy read and filed, and on motion of Mr. Tilghman and Mr. Budd, for complainants:

It is ordered that the trunk, and all the papers and documents referred to in the said affidavit, shall forthwith be delivered by the said Lyon J. Levy to Oliver Hopkinson, esq., the master in this case, and that the said trunk, papers, and documents be by the said master examined and numbered, and that he report a schedule to this court.

Certified from the minutes, this 27th June, 1843.

[L. S.]

FRA. HOPKINSON,
Clerk circuit court.

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit.

COHEN et al.
vs.
GRATZ et al. } In equity.

To the honorable judges of the said court:

The undersigned, to whom it was referred, by the annexed order of court, to "report a schedule of the papers and documents" mentioned in the affidavit of Lyon J. Levy, filed June 27th, 1843:

Respectfully reports, that the execution of the said reference consists of schedule A, hereto annexed; said schedule contains a list of all

the papers and documents contained in the trunk at the time of its delivery to the undersigned.

All of which is respectfully submitted.

October 10th, 1843. O. HOPKINSON.

A.

List of papers and documents.

Notice of rule	March	7, 1831.
Do. do.	do.	
Notice to produce papers	No date.	
Do. do. do.	April	21, 1829.
Copy of notice to produce papers	No date.	
Notice to produce	June	19, 1822.
Papers called for to produce at trial	January	21, 1822.
To produce E. Hart's release	June	27, 1822.
Copy of service of notice	April	24, 1824.
Notice to produce letters	July	25, 1822.
Notice to produce on trial	March	19, 1830.
Notice of trial	do.	do.
Order to James Bogall	April	14, 1775.
Memorandum of Wm. Simons	Aug.	27, 1774.
Notice of trial	April	13, 1829.
Notice to produce books and papers	December	22, 1828.
Do. do.	April	13, 1829.
Copy of notice	January	23, 1822.
Notice to Levi Phillips and others	June	6, 1822.
Notice to take depositions	April	10, 1829.
Rules of court, notice to produce paper	March	7, 1831.
Notice to Jos. S. Cohen to produce	May	2, 1831.
Receipt of John Ashton	March,	1795.
Copy of location of Proctor's lands	Aug.	1, 1766.
Obligation of David Franks	May	18, 1790.
Division of lands of S. C. Trent	July	1, 1822.
Lands or improvements	April	6, 1768.
Expenses of lands	March	9, 1776.
Copy of indemnity	July	26, 1802.
Land in Cumberland county	August	1, 1766.
Defendants' commissioners, interrogatories	and no date.	
Copy to Michael Gratz	March	17, 1793.
Notice to Simon Gratz	October	27, 1792.
Simon Gratz to Levi Phillips	October	26, 1812.
Letter to Joseph Simon	May	17, 1792.
Letter to Joseph Simon	Decem.	6, 1792.
Do. do.	October	30, 1791.
Do. do.	July	30, 1789.
Do. from Simon Gratz	April	15, 1799.
List of lands mortgaged	No date.	

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List of lands and cost of them	No date.	
Order from William Rayloles	July	28, 1803.
Bill of costs in non pros.	March	12, 1803.
Account of sheriff sale of land in North. co.	No date.	
Charles Smith to Joseph Simon	January	24, 1793.
Letter from John Woods to Mr. Phillips	April	6, 1809.
Letter to Levi Phillips	Febr'y	19, 1805.
Do. do.	Novem.	14, 1804.
Amos Levy's corrections from the books of J. Simon	July	10, 1810.
Letter to Levi Phillips from James Potter	Febr'y	4, 1802.
Note to do. from J. Cohen	No date.	
Letter from Simon Gratz to Simon S. Gratz	July	25, 1796.
Do. from John Norris to Simon & Phillips	Septem.	30, 1802.
Do. to Joseph Simon	Decem.	12, 1794.
Drafts of Middle creek land	No date.	
Letters to Phillips & Cohen from S. & J. Gratz	April	6, 1818.
Do. from S. Gratz to Joseph Simon	April	6, 1810.
Do. do. do. to James Hamilton	Novem.	7, 1802.
Do. from S. Gratz to Simon & Gratz	June	1, 1790.
Do. from Solomon Ettynge to Joseph Simons	Decem.	18, 1791.
Do. from Mary Beaks to Levi Phillips	August	23, 1806.
Do. from John Caman to Levi Phillips	August	20, 1806.
Do. from Simon Gratz to Joseph Simon	June	3, 1791.
Do. from John Caman to Levi Phillips	May	2, 1802.
Do. from Amos Levy to Joseph Simon	Novem.	29, 1802.
List of bonds of Simon and King	No date.	
Letter to Jo'h Simons, sr., from David Franks	October	20, 1780.
Envelope to David Franks	March	15, 1790.
Acc't curr't Joseph Simon and David Franks	October	29, 1778.
Letter from Parkick Rice to L. A. Levy	March	10, 1778.
Account current Jos. Simons and David Franks	October	28, 1772.
Do. of David Franks	Decem.	24, 1765.
Simon and Franks' account current	July	1, 1778.
Do. do. do.	Do.	
Index paper	No date.	
Notice to Simon Gratz	Do.	
Do. Simon & Gratz	Do.	
Index for continental expenses	Do.	
Account of Simon and Franks	June	9, 1777
Letter to Joseph Simons & Franks	April	26, 1787.
Memorandum of debts of J. Simon	No date.	
Letters from Levy to Levi Phillips	October	21, 1804.
Do. do.	Novem.	7, 1804.
To Simon Gratz from grandson	October	6, 1791.
Amount rec'd by repr's of Gratz	June	20, 1822.
Receipt of J. Simpson	May	15, 1788.
Paper of no consequence.		
Receipt from John Mifflin	June	21, 1803.

Account of Joseph Simon and Levi Trent		1769.
Agreement for the lands of Proctor	Decem. 22,	1804.
Accounts of Joseph Simons & Michael Gratz	No date.	
Bill to Joseph Simon	June 10,	1803.
Copy of notice to Peter Tuss	Septem. 15,	1823.
Bill to Bernard & Michael Gratz	July 7,	1790.
Account of Bernard & Michael Gratz	Novem.,	1776.
Deed of Moses Cohen	Septem. 13,	1785.
Letter from Levi Phillips to Simon Gratz	October 7,	1805.
Do. from Simon Gratz to Levi Phillips	October 27,	1805.
Bill against the estate of Him. Levy.		
Do. of Phillips against Baughtins	No date.	
Papers of Moses Henry's estate	August 15,	1805.
Accounts of Mikoy Israel with Aher Davy	No date.	
Bill of expense of procuring interest.		
Accounts of Levy & Phillips	Septem. 17,	1784.
Do. do.		
Letter from J. Hollingsworth to Jos. Simon	Novem. 12,	1793.
Hebrew letter to Levy Phillips	May 17,	1797.
Bills of Simon & Gratz	August 14,	1776.
Agreement between Levi Phillips & J. Panmere	March 29,	1804.
Letter from Liber to Levy Phillips	Feb'ry 1,	1790.
Do. from Irwin and Bruthfield to Simon & Gratz	March 31,	1797.
Do. from Michael Gratz to H. Levy	May 29,	1774.
Do. from Joseph Simon to Levi Phillips	January 12,	1791.
Do. do. do.	Novem. 24,	1788.
Lamb & Plumb's bond to Joseph Simon	Decem. 24,	1754.
Duplicate of do.		
Letter from Joseph Simon to Phillips	Decem. 22,	1799.
Note from Phillips to Joseph Simons	June 13,	1798.
Simon Gratz's account with Simon & Gratz	March 26,	1795.
Gratz and Franks' do.	Decem. 7,	1803.
David Franks to Jos. Simon	Novem. 19,	1780.
John Ashler to Jos. Simon	June 17,	1792.
George Davis to do.	August 9,	1795.
Do. to Simon Gratz	January 24,	1795.
To Jos. Simon	May 11,	1787.
Letter from M. Reynold to Levy Phillips	October 20,	1807.
Do. from Wm. Potter to Calvin Blythe	April,	1819.
Proof of plaintiffs' title	No date.	
Mathias Stole, application	Novem. 22,	1817.
Mathias Stole, Northumberland county	August 19,	1793.
Depositions of witnesses.		
Rough land chart.		
Note to Simon Gratz and others	March 26,	1799.
Depositions of Gill and others.		
Mr. Maclay to John Lukens	May 1,	1767.
Rough land chart		1825.

List of court sittings.
Notice of trial in circuit court of Mifflin county - 1819.
Legal papers of Mifflin county.
Letter.
List of jurors.
Depositions.
Letter and accounts to Simon Cohen.
Receipt for land sold.
David Franks' lot in Cumberland co.
Brunswick land.
Deed from Bernard Gratz to Jo'h Simon - - March 20, 1788.
Letter.
Do. from Jos. Simon to Simon Gratz - - March 27, 1797.
Receipt of M. Reynolds - - - - - May 27, 1805.
Debts due Jos. Simons' estate.
Jos. Simons' acc't with Michael Gratz.
Papers of Jos. Simons.
Gratz's account current with David Franks - - April 30, 1831.
Note.
Letter to Simon Gratz - - - - - July, 1831.
Note to Simon Gratz - - - - - July 19, 1831.
Commonwealth of Penn'a to Levy Phillips - - June 24, 1831.
Letter from Simon Gratz to Levy Phillips - - July 29, 1831.
Do. do. - - July 22, 1831.
Paper of interests, &c. - - - - - July 4, 1793.
Letter to Jos. Simon.
Hebrew Letter to Levi Phillips.
Memorandum, lead pencil.
Account of sales.
Jared Ingersoll's letter - - - - - August 2, 1813.
Mifflin letter and Cohen's ackm't Anderson's letter October 22, 1808.
J. Gratz's administration.
Letter to Jos. Simons - - - - - - Decem. 30, 1802.
Letter to Jno. Mifflin - - - - - - Septem. 25, 1803.
Do. to Jos. Simon - - - - - - April 12, 1803.
Statement of lands sold by Simon Gratz - - 1808.
Note from Charles Smith.
Account of J. Simons' bond and interest.
Mr. Trent's bond and mortgage, account with Simon and Franks.
Account of David Franks.
Copy of letter of Bochery Cohen to Mirian Gratz, Febr'y 23, 1798.
Order of the Lancaster court - - - - Novem. 13, 1813.
Schedule H.
Simon Gratz's admin'n.
Agreement of Franks with Simon - - - 1779.
Lands sold by Mifflin.
Simon Gratz's advance for Trent - - - Decem. 10, 1802.

Agreement of John T. Mifflin and Joseph Simon - Decem. 30, 1802.
Mr. Raul's deposition - - - - - - March 7, 1831.
Wm. Trent, bond and mortgage - - - - 1788.
Notes of points of evidence.
Note to Levi Phillips.
Franks, Andrews & Williams, drs. to Joseph Simon.
Levy Phillips' letter - - - - - - March 30, 1811.
Statement of Levy, Andrews and others.
Tax on land in Northumberland co. - - - June 19, 1801.
Do. unpaid for sundry tracts.
Letter of Levi Phillips - - - - - April 19, 1811.
Copy of letter to David Anderson - - - May 9, 1802.
Letter from John S. Mifflin to Levi Phillips - May 7, 1808.
Do. do. - - Decem. 6, 1805.
Do. do. to Jos. Simon - - April 28, 1803.
Do. do. do. - - Novem. 2, 1803.
Do. of Levy Phillips from A. Levy - - - Septem. 16, 1808.
Agreement between John F. Mifflin and A. Bear - Febr'y 20, 1809.
Acc'ts curr. between Simons & Gratz.
Lease of John F. Mifflin.
Letter to Levi Phillips from John Collins - - Novem. 22, 1805.
Agreement, John Caman and Jos. Simons - - January 8, 1800.
Moses Henry Bond to Susan Millegan - - - July 14, 1805.
Copy of bond and mortgage, requested by referees June 30, 1822.
David Myers to Simon and Gratz, Dr. - - 1834.
Letter of Samuel Breck from Edward Bond - May 3, 1826.
Letter of Levy Phillips from Simon Cohen - - April 23, 1831.
Newspaper - - - - - - - - July 25, 1790.
Transcript of a record, Gratz & Phillips.
Papers in the handwriting of Mr. Trent - - May 1754.
Lease of Peter Oring to Wm. Brown - - - Sept. 17, 1800.
Drafts of tracts of land belonging to Jos. Simons.
General draft of Jos. Simon's land in Gorge's valley.
George Smith, conveyance of the Middle creek land, Sept. 6, 1795.
Rule of circuit court to appear at New Berlin - March 27, 1831.
Simon & Gratz, admin'rs - - - - - - Sept. 28,
Statement of property sold and held by Mr. Gratz August 10, 1790.
Wm. Clay's account paid in Philadelphia.
Lands claimed by Jos. Simons under mortgage.
Receipt of C. Smith - - - - - - April 9, 1778.
Note to L. Phillips from Simon Gratz - - - do. 25, 1814.
Peter Fiss account.
Bill, Cohen to the Bedford lands - - - Nov'r 19, 1805.
Gratz & Phillips' exemplification of record - - July, 1807.
Dr. John Anderson, acc. with John T. Mifflin - October 20, 1807.
Gratz & Phillips' exemplification of record - - March, 1811.
Deed of John Foster to Capt. Procter.

Deed from William Trent to Jos. Simons.
Record of the above - - - - - - No date.
Deed of Adw. Foster to Capt. Procter for 500 acres Jan'y 12th, 1764.
Bond of A. M. McKee to Simon, Milligan, McClure August 27, 1773.
Letter from Nathan Beats to Levi Phillips - - March 2, 1820.
Sale for taxes - - - - - - - August 25, 1790.
Commonwealth of Penn'a to Levi Phillips - - Nov'r 20, 1829.
Do. to John Rodgers - - - - - May 7, 1831.
Copy of articles of copartnership - - - - 1760.
Sales relating to the Northumberl'd and other lands.
George Knip's account.
Whelan & Stotler account.
Dewald Steininger account.
A. Shawler's do.
Statement of errors in the report of the referees.
List of lands held by the estate of Jos. Simons.
Philip Glominger's bill.
Table of expenses and interests.
Statement of expenses for the lands of Trent - April 30, 1831.
Note to Jos Cohen.
Paper of expenses.
Account of expenses on Wm. Trent's bond and mortgage - - - - - - - 1824.
Expenses for lands of Trent - - - - April 30, 1831.
Account presented by Jos. S. Cohen to Lancaster court - - - - - - - - May, 1830.
Account made. Lancaster.
Statement of Mr. Cohen's tract of land and others.
Book account of Michael Gratz - - - - 1793.
B. & M. Gratz's administration for J. Simon. 1831.
Do. do. stated to be incorrect.
Michael Gratz, administration.
Paper of principal and interests of Trent & others 1790.
Do. do.
Bill of Cohen & Gratz to Jos. Simon.
Paper of interests.
Agreement between M. Gratz & Jos. Simon - February 27, 1790.
John Gibson's land to Simon & Ettynge - - March 2, 1790.
Letter from Thomas Duncan - - - - October 21, 1808.
Bill from David Franks to Jos. Simon - - 1778.
Letter from Thomas Roker to Levy S. Levy - February 20, 1770.
Do. from James Milligen to Jos. Simon - - January, 1772.
Do. from Andrew Levy to Levi Phillips - - Sept. 19, 1804.
Do. to Jos. Simons.
Receipt of David Franks.
Do. do.
Do. do.
Letter from Jos. Simon to Ner Middleswarth - Decem'r 19, 1829.

Letter from Solomon Cohen to Jos. Simon - April 27, 1789.
Do. from John McClure to Jos. Simon - - January 4, 1774.
Do. do. Solomon M. Cohen to Jos. Simon - July 14, 1791.
Do. do. Joseph Simon to Michael Simon - Septem'r 4, 1790.
Comm'th of Penn'a to Beliah Cohen - - - Novem'r 25, 1812.
Letter from Mr. Trent to Jos. Simon - - - April 26, 1794.
Do. do. Michael Gratz do. - - - April 28, 1792.
Do. do. Simon Cohen to Levi Phillips - - August 3, 1813.
Gratz administration.
B. & Gratz account - - - - - - October 2, 1799.
Receipt of Hyman Gratz.
Index of Procter's deeds.
Bill of Bernard & Michael Gratz to J. Simon - 1798.
Memorandum papers of Simon & Ettynge.
Letter from J. Simon to his son - - - - September 4, 1784.
David Franks' order - - - - - - May 18, 1790.
Bond of Capt. Procter, Mr. Trent & James Spear January 12, 1764.
Deeds to Jos. Simon - - - - - - - do. do.
Paper book, indenture of Wm. Trent and others - January 19, 1776.
Memorandum of Weider & Franks.
Copy of articles given by Simon Gratz - - January 7, 1804.
Do. of Boyd's & Mifflin's account - - - May 19, 1810.
Inventory of the goods of Simon and Eytinge.
Lands and Jos. Simon, account with Simon Gratz 1799.
Indenture between Wm. Trent and Geo. Crogan February 18, 1799.
Lands, and Michael Gratz with J. Simon - - 1799.
Accounts settled between B. and M. Gratz - - 1797.
Letter from David Franks to Jos. Simon - - May 11, 1787.
Do. do. - - - - - - Septem'r 21, 1786.
Jos. Simon's acc. current with Michael Gratz - 1790.
Commissions and answers, Gratz and Simon's - Septem'r 17, 1788.
Exhibit A, of Andrew Levy.
Michael Gratz, commis. to Baltimore.
Cumberland co., Wm. Trent - - - - July 5, 1793.
Moneys due M. Gratz.
Jos. Simon's estate to B. and M. Gratz - - March 5, 1819.
Agreem't between John T. Mifflin and J. Beor - Februa'y 23, 1809.
Do. do. and Shawber - - - do.
Receipt of Moses Franks - - - - - Novem'r 15, 1787.
List of names of the Middle creek lands - - May, 1816.
Account of William Trent, bond and mortgage - 1792.
Reply to Simon Gratz - - - - - July 24, 1797.
Agreem't between Jos. Spanan and Henry Meader March 9, 1803.
Simon and Franks, to the estate of Wm. Trent - 1772.
Account duplicate of Wm. Trent's bond and mortgage - - - - - - - - - 1792.
Mortgage to Crogan - - - - - - - 1768.
Jos. Simon in acc't with Wm. Grey - - - August 26, 1790.

Indenture between Simon Gratz and George Link-infetter.
List of lands mortgaged by Wm. Trent - - - January 18, 1769.
Do. do. and sold to Simon and Gratz, and expenses on Trent's land - - - - - 1808.
Receipt of John Stilher, jr. - - - - - July 11, 1785.
Order to Wm. Phillips.
Note from Jos. Simon to Wm. Henderson - - July 1, 1803.
Diagram of George Aloway and Nicholas Parker.
Copy of John Lukens' receipt - - - - - July 28, 1781.
Receipt from McCoy of papers - - - - - July 20, 1791.
Memorandum of payments of Parker, Cox, Trent, &c. - - - - - - - - - - May 5, 1767.
Receipts of papers from Wm. Cox.
Land of Wm. Trent sold.
Statement of the commissioners for Trent's land.
Land sold by Mr. Trent.
Location lands instead of Gorge valley lands - August 1, 1776.
Copy of statements of 1912 acres of land - - January 24, 1804.
La. of Jos. Simons to John Blair - - - - March 11, 1805.
Dr. Bernard and Michael Gratz in acc't.
Account of tract of land in the name of Jas. George.
Bernard and Michael Gratz assi. to David Franks 1793.
Small mem'n papers.
Do. of interrogatories - - - - - - June, 1804.
Wm. Trent acc't for bond and mortgage - - 1822.
Gratz and Phillips, Trent's bond - - - 1809.
David Franks for Jos. Simon's accepted order - 1779.
Deed of John Penn, jr., to John Maire - - May 11, 1786.
Memorandum of payments.
Copy of deed of Simon Gratz - - - - - May, 1830.
Certificate of the administration of Moses Franks - March 10, 1796.
Account with David Franks.
Dr. Jos. Simon, account with David Franks.
Note - - - - - - - - - - February 10, 1709.
Memorandum.
Note from Simon Gratz - - - - - March 6, 1814.
Letter to Jos. Simons - - - - - April 10, 1798.
Memorandum of land account, &c. - - - - 1790.
Letter from Simon Gratz to Levi Phillips - - October 20, 1805.
Jos. Leman's account with Michael Gratz - - August 28, 1831.
Memorandum of tracts of land sold - - - May 6, 1805.
Copy of the award - - - - - - - 1810.
Peters and Trent with the estate of Reuben Haines 1794.
Memorandum of cash receipts.
Question of the commissioners sent to Valley.
Letter from Mr. Haines to Levy Phillips - - March 17, 1806.
Mr. Whigthigton, sheriff, deed to Jos. Simons.

Wm. Trent, bond and mortgage - - -	Decemb.	13, 1813.
Do. do. to Simon and Franks.		
Bill from do. to do.		
Jos. Simon with Simon Gratz, &c. - - -		1769.
Lands claimed under the mortgages descr.		
Protested note of Jos. Simon and Simon Gratz -		1793.
Memorandum of Cohen and others.		
Copies of docket entries - - - - - -	March,	1811.
Memorandum of settlements.		
Index of settlements - - - - - - -	Septem'r	30, 1774.
Accounts of Levy, Trent, and with David Franks		1760.
Bill of David Franks.		
Letter to Levy Phillips settlement of land.		
Bill of Trent, against Simon's estate - - -		1831.
Wm. Meredith receipt in full for the judg't of M. Gratz.		
Receipt of Simon Gratz administration - -	June	21, 1813.
Receipt of Simon Gratz from Levy Phillips.		
Letter from Levy Phillips to Simon Gratz - -	April	19, 1814.
Record of the supreme court of the east. dis. of Pa.	June	10, 1822.
Jos. Simon's bill against Wm. Trent - - -		1765.
Obligation of John Ritter for Nicholas Miller's bond.		
Page 19, of accounts of Joseph Simon.		
Memorandum of executors of Simon Gratz - -		1811.
Copy of the property recovered by the representatives of Gratz and Franks - - - - -		1779.
Receipt of Mr. Phillips.		
Obligation of Franks & Simons to Richard Hockley	July	31, 1790.
Copy of John Steinmetz's letter - - - -	August	22, 1792.
Letter of Levy Phillips from Charles Smith -	January	31, 1812.
Memorandum.		
Index paper.		
Jacob Waggoner's tract of land.		
Draft of a tract of land called the Oblong.		
Sale of James Hunt to William Cox - - -	Febr'ary	20, 1769.
Duplicate of tract called the Oblong		
Major Trent's certificate - - - - - -	October	22, 1766.
Draft of a tract of land in the co. of Northumberland		1805.
Deed of James Wilks to William Trent - -	August	5, 1867.
Draft of Joseph Smith's lands - - - -	August	27, 1789.
Michael Hillegoas, caveat against granting -	August	23, 1790.
Account of Michael Gratz - - - - - -		1805.
Statement of shares of Levy Trent in the Indiana land - - - - - - - - - -		1763.
Calculation for the debts of Simon Levy - -	May	3, 1767.
Copy of George Crogan's note - - - -	August	4, 1822.
Letter of Jos. Simons to Bernard and Michael Gratz	Nov'ber	28, 1787.
Receipt of David Espy - - - - - -	October	21, 1781.

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Memorandum of loans to Henry Cruger - - 1792.
Power of attorney from Bernard and Michael Gratz March 27, 1793.
Cumberland and Steuart tract of land.
Estate of Joseph Simon with Michael Gratz - 1804.
Receipt of Moses Franks to Joseph Simon - - Nov'ber 15, 1787.
Price of sundry tracts of land, Gratz and Simon.
Philip Palmer's 200 acres, Columbia county - March 28, 1769.
Copy of application of Samuel Cochran - - October 14, 1802.
Palmer's application. Attest: H. Antes - - August 1, 1766.
B. and M. Gratz, account with Joseph Simon.
Copy of account of Simon, Levy, Trent & Co. - August 10, 1824.
Do. do. do.
Bill of John Wicks against Joseph Simon's estate 1805.
Copy of David Franks, assignee to B. and M. Gratz 1790.
William Trent. Bond and mortgage.
Memorandum.
Memorandum of Joseph Simon - - - - May, 1830.
Memorandum of tracts of land, orders, &c. - - 1830.
Do. do.
Excepted order, amount.
Name of lands bought at sheriff's sale.
Receipt of Joseph Simons from J. Hamilton.
David Franks, assignee with B. and M. Gratz - March 13, 1804.
D. Franks acct' of assigning to B. and Michael Gratz Febr'ary 10, 1822.
Statement of Michael Gratz, proportion of moneys.
Account current, Jonathan T. Mifflin and John Anderson - - - - - - - - 1812.
Dr. William Trent and Joseph Simon - - 1802.
Estate of Joseph Simon to John Hubley.
Time of return of survey of Wm. Cox, M. Kean, and Philip Palmer - - - - - - - 1769.
Indenture between Jos. Simon and Moses Franks November 6, 1787.
Accounts between Simon and Gratz.
Memorandum.
Account of William Trent's bond and mortgage.
Receipt from J. Hamilton to Joseph Simon - December 6, 1767.
Receipt from Levy Phillips to estate of Simon - May 20, 1828.
Account taken from Philadelphia library book.
Joseph Simon to Alexander Scott - - - May 4, 1798.
Promissory note of Matthias Sling - - - May 22, 1797.
Promissory note of Alexander Scott - - - January 1, 1798.
Bernard and Michael Gratz's obligation - - May 15, 1792.
Interests, &c., of George Valley land.
Statement of three tracts of land - - - - 1824.
John Clum, paper of accounts.
Simon Gratz and others, administrators - - January 1, 1822.
Amounts of moneys received by the agents - - 1811.
Interests, &c.

Letter to Joseph Simon from John Gibson		April	16, 1793.
Letter from Levy Phillips to John Andrews		Nov'ber	24, 1807.
Letter of Joseph Simon		April	8, 1793.
Letter of Levy Phillips from John Norris		June	, 1803.
Lease of William Brown to Peter Amig		Sept'ber	17, 1800.
Draft of land in Northumberland county		Dec'ber	31, 1782.
Draft of Robert Sample in Northumberland county		March	23, 1767.
Statement of accounts of B. and M. Gratz, orders		April	, 1831.
Joseph Simons account with David Franks			1777.
Certificate of orphans' court, to exhibit accounts of		August	15, 1831.
Memorandum			1790.
Copy of Wm. Trent's bond and acc. with J. Simon			1765.
David Franks' account with B. and M. Gratz		April	, 1831.
Letter to Levy Phillips, executor of Joseph Simon.			
Memorandum of notes, &c.			
Receipts, notes, &c.			
Robert Sample, 300 acres, testimony of Brodhead			1767.
Copy to produce at trial.			
Drafts set off			1790.
Bill of Joseph Simons against William Trent.			
Estate of Joseph Simon with Michael Gratz, land account.			
Copy of account with David Franks		April	, 1831.
Statement of account for B. and M. Gratz's order.			
Joseph Simon with M. and B. Gratz.			
Exemplification, power of attorney, B. and M. Gratz to Joseph Simon		March	27, 1793.
B. and M. Gratz with Joseph Simon.			
Defendants' claim for expenses.			
Gratz and Phillips, memorandum.			
Levy Phillips, memorandum.			
Memorandum.			
Sales of tracts of land in George's Valley.			
Lead pencil memorandum.			
William Trent, expenses to Bedford			1805.
Statement of M. Gratz, proportion of moneys rec'd.			
Amounts received on lands in Co.			
Receipt of Joseph Simon from Robert Armstrong		August	7, 1781.
Memorandum.			
Order of George Crogan			1770.
David Franks' final account relating the com. Levy, Trent.			
Lead pencil memorandum.			
Cohen's certificate of Rawle's statement		Sept'ber	23, 1822.
Lead pencil memorandum.			
Gratz and Phillips, supreme court.			
Levy and Franks with Simon Gistee		Febr'ary	9, 1750.
Letter from H. G. Long to Simon Cohen		April	8, 1829.

Levy and Phillips, memorandum.
Order at sight from Bernard Gratz - - - October 20, 1785.
Letter of Joseph Simon from Augustus Crevert - June 1, 1783.
Memorandum of Patrick Kelly and others.
Copy of account of the accepted order delivered by S. Gratz.
Letter - - - - - - - - - - Febr'ary 21, 1823.
David Franks' account for his assigning to B. and M. Gratz.
Copy of John Wicks and other, statement - - 1805.
Subpœned to Phillips, Cohen, and Simon - - Dec'ber 10, 1830.
Sale tract of land being the George Valley land.
Joseph Simons' or L. H. Levy, bill of fees - - July 5, 1790.
Account of B. and M. Gratz with M. Simon.
Nicholson and Blight, memorandum.
A statement of errors and objections against the report of referees.
Letter of Levi Phillips from John Blair - - Febr'ary 15, 1822.
Franks, adm. with Simon, exe., notice of claims.
Memorandum.
Gratz and Simon, copy of the report of referees - December, 1806.
Levy, Trent, and Franks with Joseph Simon.
David Franks and Joseph Simons, balance due Levy, Franks, and Trent.
Note to M. Norris.
Envelope of Simons, Levy & Co.
Conditions of sale of lands of Simon.
Account of errors in the report and charges.
George Krepp and others to Simons' estate.
Letter - - - - - - - - - April 13, 1830.
Memorandum of balances due Joseph Simon.
Order from James Pollock in favor of J. Simon - May 7, 1779.
Trent's bond and mortgage.
Memorandum of dates.
David Franks account with Simon.
Do. do.
Letter from Michael Gratz - - - - - Dece'ber 13, 1792.
Letter to Joseph Simon - - - - - April 14, 1791.
Do. do. - - - - - Sept'ber 17, 1789.
Do. do. - - - - - July 22, 1791.
Letter to Joseph Simon from Michael Gratz - - Dec'ber 20, 1792.
Letter to Simon and Phillips from J. Anderson - May 1, 1801.
Letter from Michael Gratz - - - - - May 31, 1792.
Letter from B. and M. Gratz - - - - April 8, 1793.
Letter from B. and M. Gratz to Joseph Simon.
Michael Gratz to Son - - - - - Sept'ber 16, 1791.
Michael Gratz to Simon and Eyttinge - - Dec'ber 17, 1789.
Michael Gratz to Joseph Simon - - - - Febr'ary 10, 1791.

Letter.
Letter.
Letter to Joseph Simon - - - - - July 4, 1793.
Do. do. - - - - June 17, 1790.
Letter to Simon Cohen - - - - - Dec'ber 9, 1828.
Joseph Simons account with John F. Mifflin - 1803.
Executors of Joseph Simon in acc. with J. F. Mifflin 1812.
Do. do. 1805.
Executors of John F. Mifflin with executors of Jos. Simon.
E. Bond, executor John F. Mifflin with executors of Joseph Simon.
Dr. John Boyd in account with John F. Mifflin - 1819.
Dr. John Boyd in account with E. Bond - - 1809.
John F. Mifflin with Joseph Simon - - - 1795.
Do. do. - - - 1795.
Letter of C. W. Hall to Levy Phillips - - July 25, 1805.
Letter to Joseph Simon from David Franks - July 30, 1759.
Letter to Levy Phillips from William Brown - May 14, 1807.
Letter from David Franks to Joseph Simons - June 20, 1757.
B. and M. Gratz from Joseph Simon - - - July 27, 1798.
B. and M. Gratz from Michael Gratz to Jos. Simon Dec'ber 24, 1791.
B. and M. Gratz from Henry Cruger to Jos. Simon December 22, 1795.
Remarks on Jos. Simon's accepted order.
Letter from Solomon Ettynge to Joseph Simon - November 4, 1791.
Do. do. - - - July 19, 1791.
Do. to Jos. S. Cohen to B. Cohen.
Promissory note of David Franks - - - Aug. 20, 1796.
Letter from Simon Gratz to Jos. Simon - - Oct. 29, 1802.
Do. from Michael Gratz to Jos. Simon - - Nov. 4, 1791.
Do. do. - - April 2, 1794.
Do. do. - - July 26, 1790.
Do. to Levy Phillips from W. Ochson - - December 14, 1810.
Do. to Jos. Simon from Simon Gratz - - Jan. 21, 1800.
Levy Trent and Franks acc't with Jos. Simon.
Letter from David Franks to Jos. Simon - - Sept. 5, 1783.
Simon and Phillips' memorandum.
Statement of objections and errors against report.
Jos. Simon's acc't curr't with Simon Levy and Trent - - - - - - - - - 1769.
Subpœna, Gratz and Phillips - - - - Oct. 14, 1808.
List of sundry papers rec'd of Jos. Simon.
Letter of Jos. Simon from Bernard Gratz - - Aug. 16, 1792.
Indemnification Bernard Gratz to Joseph Simon - April 4, 1788.
Objections stated by L. Phillips.
Gratz's administrators, Simon's executors.
Copy of letter to Levy A. Levy - - - - Feb'y 16, 1810.
Letter from Simon Gratz to Jos. Simon - - Aug. 20, 1802.

Copy of a letter to Simon Gratz from Jos. Simon.		
Do. to J. Gratz - - - -	Aug.	10, 1812.
Do. to Simon Gratz - - -	Aug.	22, 1802.
Do. from Simon Gratz - - -	Feb.	6, 1795.
Do. do. - - -	Feb.	28, 1803.
Agreement signed by Geo. Crogan, Wm. Trent -	July	12, 1762.
Mem. of Middle creek lot, And'w Crogan share -	March	10, 1800.
Mem. of David Franks.		
Letter to Levy Phillips - - - - -	Aug.	20, 1830.
Do. do. from Ner Middleswarth -	Jan.	3, 1831.
Do. do. from Charles Baldwin -	March	19, 1825.
Do. do. from Jos. Paxton - -	March	1, 1827.
Do. do. from Jno. Boyd - -	April	15, 1808.
Do. do. from M. C. Rodgers -	Nov.	28, 1827.
Do. do. from Simon Cohen - -	Nov.	17, 1827.
Subpœna of Gratz and Phillips Potter - -	Nov.	14, 1808.
Letter to Simon Cohen - - - - -	March	29, 1828.
Bill of Joshua Ritter to Frederick Bates - -	May	1803.
Copy of agreement from Nathan Beach - -	March	3, 1812.
Copy of a letter to John F. Mifflin - - -	June	19, 1810.
Letter to Joseph Simon from Eliza Levy - -	Sept.	8, 1802.
Do. from John Irwin to Joseph Simon - -	July	19, 1794.
Bedford co., general drafts of land.		
Levy Phillips vs. Henry Woods and Saunders Frazier - - - - - - - - -	Sept.	11, 1805.
Letter from John Wicks to Levy Phillips - -	April	30, 1810.
Do. from John Gill to Levy Phillips - -	Feb.	1, 1805.
Do. from S. Breck to Levy Phillips - - -	March	2, 1831,
Do. from John Geyer to do. - - -	Decem'r	30, 1816.
Do. from John Guire to do. - - -	April	24, 1818.
Do. from John Wicks to do. - - -	Decem'r	19, 1817.
Do. to Jos. Simon from A. McKee - - -	Sept.	11, 1772.
Do. from John Wicks to Levy Phillips.		
Copy of Bremer's protest.		
Order to Levy Phillips.		
Letter to J. Simon Cohen - - - - -	April	27, 1828.
Letter to Levy Phillips from Samuel Breck -	Dec.	20, 1826.
Copy of letter to Samuel Breck - - - -	Dec.	24, 1826.
Letter of J. Simon Cohen - - - - -	May	5, 1826.
Letter from Levy Phillips - - - - -	Aug.	11, 1826.
Extract from J. Lashill's letter of - - -	Sept.	26, 1824.
Letter to Levy Phillips from M. Rogers - -	March	10, 1828.
Do. to Jos. S. Cohen from Sam'l Breck- -	Debem'r	1, 1829.
Copy of letter from John Lazell - - - -	May	20, 1827.
Letter from M. Rogers to L. Phillips - - -		1825.
Do. do. Henry Rogers to do. - -	Sept.	28, 1825.
Do. do. from Samuel Breck to S. Gratz		
Do. do. to Levy Phillips - - - -	May	27, 1826.

Letter from Henry Rogers to Levy Phillips - June 15, 1825.
Do. do. Samuel Breck to Levy Phillips - Nov. 27, 1819.
Memorandum.
Copy of Directions to Mr. Harris.
Letter to Levy Phillips from Jacob Briver - - March 30, 1815.
Do. to J. Simon Cohen from M. Lazall - - Oct. 7, 1828.
Do. to Levy Phillips from John Lyon - - Sept. 6, 1809.
Do. do. from Samuel Breck - - May 11, 1825.
Do. do. from Benj. R. Morgan - April 26, 1808.
Do. do. from Charles Smith - - May 27, 1814.
Do. to Jos. Simon from French Cox - - Feb'y 7, 1782.
Do. to Levy Phillips from Jno. Morris - - Sept. 24, 1811.
Letter to J. Simon Cohen from H. Rague - - May 15, 1826.
Letter to J. Simon Cohen from M. Taziles - March 12, 1827.
Memorandum.
The Commonwealth of Pennsylvania and Jos. Simon.
Memorandum.
Indenture between Jos. Simon and Saml. Owing June 24, 1801.
Samuel Hayes' letters.
Samuel Hays to Jos. Simon - - - - - Aug. 20, 1795.
Memorandum of Gratz and Phillips.
Memorandum of Franks, Trent, and Simon.
Letter from Jos. Simon to John Campbell - - Feb. 24, 1778.
Inventory of Simon and Campbell, kitchen furniture - - - - - - - - - - 1777.
Orders from Lieut. Col. Wilkins to Moses Henery July 17, 1768.
Cox and Fraziers' receipt.
Do. do. do.
Protested bill of Richard Lee on Sam. Vaughan - 1785.
Order of Archibald Patterson - - - - June 5, 1783.
Letter from Jas. Buron to Joseph Simon - - Decem. 10, 1798.
Messrs. Simon and Phillips from John Carrell.
Letter of Levy Phillips from John Lyon - - Decem. 8, 1804.
Order from Lieut. Col. Wilkins to Moses Henery July 17, 1768.
Indenture between Jacob Bousman and Peter Keyser - - - - - - - - - Sept. 1, 1773.
Order of Lieut. Col. Reid to Moses Henery - - Aug. 20, 1765.
Accounts of Messrs. Simon and Gratz - - - 1776.
State tax circular - - - - - - - Aug. 18, 1831.
Accounts of Joseph Simon.
Bill of Wm. McLay for surveying.
Lt. Col. John Reid, permit to John Gibson - - Aug. 28, 1765.
Note to Jos. Simons - - - - - - March 21, 1750.
Charles McClure, conveyance to J. Simons, Milligan - - - - - - - - - July 28, 1771.
Letter from Simon Gratz to Jos. Simon - - Feb. 6, 1798.
Sabastian Boyer, application - - - - June 13, 1793.
Solomon Kyeser to the board of property - - May 15, 1815.
Mr. Trent, account for bond and mortgage.

Account of moneys received of Jos. Simon.
Jos. Simon's acc't curr't with Simon and Gratz - March 14, 1797.
Letter from Jos. Simon from Simon Gratz - - Decem. 10, 1778.
Jos. Thompson from Jos. Simon - - - March 18, 1796.
Letter from James Potter to Jos. Simon - - August 5, 1801.
Memorandum of James Potter.
Letter from Michael Gratz to Jos. Simon - - Feb. 21, 1776.
Letter from Michael Gratz to Jos. Simon - - Jan. 15, 1795.
Letter from Wm. Orlison to Levy Phillips - - Jan. 28, 1809.
Do. Simon Gratz to Jos. Simon - - Feb. 6, 1815.
Bill of Jos. Simon, Hyman Gratz. - - - Sept. 16, 1802.
Copy of letter from Wm. Trent - - - - January 21, 1769.
Jos. Simon acc't curr't with Moses Franks - - 1771.
Notice to Joseph Simon - - - - - June 26, 1798.
Letter to Jos. Simon from Saml. Sample - - Sept., 1771.
Do. to Jos. Simon from Hyman Gratz - - Sept. 28, 1801.
Do. do. do - - May 25, 1800.
Memorandum of interests.
Memorandum.
Deposition of Levi Phillips - - - - - June, 1800.
Deposition at Wm. Raul's office.
Agreement of Jos. Simon with Thomas Buchanan Aug. 3, 1792.
Drafts of land in Northumberland county, of John Lukens.
Do. do. Joseph Silver.
Account of expenses relative to Trent's bond - 1788.
Michael Gratz, acc't relating to the lands of Trent 1791.
Letter from Jos. Simon from Wm. Trent - - - April 6, 1779.
Do do. do. - - Dec. 14, 1778.
Land of Joseph Simon - - - - - - 1795.
Defendants' objections.
Copy of conveyance from Trent to Peters - - April 8, 1769.
Simon, Jacob, and Joseph Gratz, administration.
Deeds for the Proctor lands.
Catalogue of plated and Sheffield goods.
Memorandum of accounts set off.
Order from the board of war to Jos. Simon - - Sept. 10, 1778.
Letter from David Franks to Jos. Simon - - Sept. 4, 1789.
Mortgage, John Blair to Levi Phillips - - - Nov. 13, 1804.
Letter to Levy Phillips - - - - - Oct. 7, 1811.
Do. do. from John Caman.
Receipt from Michael Gratz to Jos. Simon - - May 21, 1776.
Bill of Jos. Simon against Jno. Caman.
Copy, Captain G. W. Prevost - - - - Aug. 17, 1807.
Note relating to a lot of Mr. Gratz.
Notice of the sup. ct., for the E. dist. of Penn. - March, 1811.
Legal Memorandum.
Tract of land, George's Valley, Northumberland co., drafts.

Power of attorney from Jos. Simon to L. Phillips July 1, 1803.
Wm. Trent, acc't for Jos. Simon's bond.
Account of David Franks.
Matters in the court of common pleas, Mifflin co. - 1819.
Letter to Simon and Phillips from Moses Gamble - Sept. 1, 1802.
Do. to Levi Phillips from John Young - - April 28, 1802.
A bill of expenses for surveying 3 tracts of Mr. Simons - - - - - - - - - May 1, 1802.
Letter to Levy Phillips from James M. Riddle - Oct. 27, 1806.
Memorandum of two tracts of land of Michael Gratz June 22, 1808.
Agreem't, Wm. Trent and Jos. Simon for sale of lands.
Legal Memorandum.
Lead pencil memorandum.
Schedule A of land of Simon - - - - - 1779.
Paper of calculations.
Order from David Franks to J. Simon - - - May 18, 1790
Amount due Jos. Simon - - - - - June, 1790.
Memorandum.
Receipts from B. and M. Gratz to Jos. Simon - March 15, 1798.
Executors of Jos. Simon with John Mifflin - August 12, 1809.
Receipt of Edward Shippen to Jos. Simon - Dec'ber 14, 1792.
Memorandum of interests.
Statement of expenses of Trent bond.
Draft for Jos. Simon and others surveyed - - July 17, 1822.
Memorandum, Gratz and Phillips.
Memorandum.
Letter to Levi Phillips from Simon Cohen - - October 28, 1817.
Balances due Mikery Israel - - - - - Nov'ber 24, 1813.
Jos. Simon mem. of lands.
Envelope, Wm. Trent to Jos. Simon.
Simon Gratz to Levy Phillips, notice to produce - May 13, 1822.
Indenture between Hazlehurst, Franks, and others May 16, 1793.
Letter and accounts of Jos. Simon from Sam'l. Hays - - - - - - - - - - August 27, 1795.
Agreement between Simon and Trent, names of land holders - - - - - - - - April 26, 1779.
Account, Jos. Simon with David Franks.
Letter to Jos. Simon from Simon Gratz - - April 27, 1791.
Do. do. - - - - - Feb'ry 13, 1795.
Do. to Simon and Gratz from Simon Gratz March 3, 1796.
Do. do. - - - - - July 8, 1786.
Do. Joseph Simon from Simon Gratz - Nov'ber 24, 1776.
Do. do. - - - - - March 16, 1778.
Do. do. - - - - - April 16, 1798.
Do. do. - - - - - May 23, 1798.
Do. do. - - - - - Dec'ber 10, 1789.
Do. do. - - - - - March 3, 1799.

Letter to Joseph Simon from Simon Gratz	Dec'ber	23, 1799.
Do. do.	April	30, 1799.
Do. to Simon & Phillips from Simon & Gratz	Sept'ber	16, 1800.
Do. Joseph Simon from Simon Gratz	Nov'ber	9, 1800.
Do. do.	April	19, 1802.
Do. do.	May	4, 1802.
Do. do.	Nov'ber	7, 1802.
Do. to Simon Gratz from Jos. Simon	March	1802.
Do. from Simon Gratz to Jos. Simon	March	10, 1802.
Do. do. to Wm. Reynolds	Feb'ry	10, 1803.
Do. do. to Simon and Phillips	Feb'ry	1, 1800.
Do. do. to Jos. Simon	Sept'ber	30, 1800.
Do. do.	July	10, 1803.
Do. to Simon and Phillips from S. H. Gratz	Sept'ber	7, 1800.
De. to Joseph Simon from Simon Gratz	Dec'ber	21, 1801.
Do. do. do.	January	10, 1802.
Do. do. do.	Dec'ber	24, 1802.
Do. do. do.	Sept'ber	29, 1803.
Levy Phillips and others, executors of J. Simon	May	1, 1818.
Simon Gratz, note of land sold.		
Joseph Simon from Simon Gratz's accounts	October	10, 1802.
Letter to Joseph Simon from Andrew Levy	Sept'ber	25, 1792.
A general account with David Franks	June	12, 1828.
Copy of David Frank's assignment		1779.
Note to Charles Smith from S. Gratz	Dec'ber	5, 1804.
Copy of the tract of land of Trent sold to Ritter	June	8, 1795.
Claimed tracts for the George's Valley land.		
Agreement between Jos. Simon and John Buchanan	May	24, 1792.
Alexander Buchanan, mem. to Jos. Simon	July	6, 1790.
Letter from A. Buchanan to Jos. Simon	January	21, 1791.
Exceptions against the award		1810.
Amicable settlement agreed		1821.
J. And. Levy to Levy Phillips	Dec'ber	3, 1810.
Letter of David Franks to Joseph Simon	July	28, 1783.
Do. do. do.	July	6, 1789.
Receipt from Wm. Reynolds to L. Phillips	May	27, 1805.
Receipt of Jacob Bennet to Wm. Reynolds	May	3, 1805.
Copy of bill of costs paid Wm. Reynolds	April,	1800.
Lands claimed location for George Valley lands.		
Mich. Gratz's account current with David Franks		
Letter from A. Levy to Levi Phillips	Dec'ber	25, 1810.
Do. do.	do.	
Do. from Mary Beaks to Jos. Simon	January	1, 1798.
Do. Simon Gratz to Simon and Gratz	March	10, 1794.
Do. do. to Jos. Simon	Nov'ber	23, 1800.
Do. A. Levy to Zeligman Phillips	Feb'ry	21, 1809.
Simon Gratz to Simon and Gratz	October	19, 1796.
Aaron Levy to Jos. Simon	April	29, 1792.
Do. do.	July	13, 1789.

Aaron Levy to Joseph Simon - - - - - 1792.
Memorandum of interests, bonds - - - - 1791.
Jos. Simon, mortgage - - - - - June 30, 1790.
Simon and Eytinge, bond accounts - - -
Lease of Joseph Simon to Robert Thompson - 1781.
Do. do. to Catharine Peters - - 1798.
Do. do. to John Mehony - - - August 21, 1789.
Do. do. to James Graham - - - do.
Simon and Eytinge, bond account dues - - Nov'ber 17, 1791.
Bond of indemnification from J. Simon to S. Ettynge - - - - - - - - June 15, 1786.
Receipt of A. J. Dallas to Jos. Simon - - August 20, 1795.
Bond of Simon Etynge to Thos. Mullet - - May 17, 1790.
Duplicate of do.
Bond of Jos. Simon to S. Etynge - - - Nov'ber 23, 1798.
Pennsylvania State Insurance Company relative to ship Tontine - - - - - - March 5, 1819.
Mullet's mortgage, envelope - - - - -
Wm. Trent for Simon Bond - - - - 1831.
J. Simon's est. with M. Gratz, administrator - 1831.
Do. do do. - -
Agreement between John Lander and Wm. More Nov'ber 20, 1806.
Trent's taxes for land in Middle creek - -
Letter to Jos. Simon from S. Gratz - - - April 6, 1803.
Do. do. - - - - March 23, 1800.
Wm. Trent's bonds and mortgage to Simon and Franks - - - - - - - - March 23, 1800.
Duplicate of do.
Letter of Michael Gratz to Jos. Simon - - April 28, 1791.
Instrument of J. Simon in reference to Trent's land
Copy of agreement of Jos. Simon - - - January 12, 1804.
Account of expenses of Wm. Trent's mortgage.
Letter from David Franks to Jos. Simon - - May 22, 1790.
Agreement between Jos. Simon and Michael Gratz August 16, 1809.
Bond of Wm. Trent to Jos. Simon for £345 - Dec'ber 28, 1782.
Do. do. for £442 17 0 - - January 4, 1770.
Do. do. for £ 95 7 11½ - - March 20, 1784.
Envelope of do.
Letter to Levi Phillips from Simon Gratz - - Nov'ber 30, 1805.
Tax for sundry tracts of Simon's land - - August 15, 1797.
Administration account of Jos. Simon - - March 28, 1828.
Levi Phillips, relative to Break's land - - April 18, 1826.
Memorandum of Adam Bear's account - - 1809.
Memorandum of Thomas Mifflin and Jos. Simon
Lozell's account for Bear and others.
Account of Jos. Simon for Wm. Trent, bonds, tract of land - - - - - - - - - 1790.
Joseph Simon to S. Gratz, engaging to pay all moneys.

2045.

Printer's sheet - - - - - - - July 26, 1802.
Old sheet of accounts.

COHEN et al.
vs.
GRATZ et al.
} Of Nov. session, 1839, No. 1, in equity.

And now, Nov. 10, 1843, it is ordered that an issue be formed and tried at law, before a jury, to ascertain the value of the lands belonging to the estate of Joseph Simons, deceased, which purported to be conveyed by Leah Phillips to Simon Gratz by her deeds of April, 1833—such value to be ascertained, 1st, at the date of the deeds in 1833; 2d, at the date of the filing of the original bill in this case, but without reference on this 2d head to any increased value occasioned by improvements put upon the land between the said two dates.

The papers in evidence, as depositions or otherwise, if competent testimony between the parties, to be read to the jury without further proof. New testimony by commission, deposition on notice or otherwise, to be submitted to the jury by either of the parties.

UNITED STATES, *eastern district of Pennsylvania, sct.*

[L. S.]

The President of the United [States,] to the marshal of the eastern district of Pennsylvania, greeting:

We command you that you cause to come before the judges of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, at a session of the same court to be holden at the city of Philadelphia, on the first Monday of February next, a number of honest and lawful men of your said district, not less than forty, who are of no affinity to any of the several parties whose causes are at issue, and are then and there to be tried at the bar of said court, to serve as special jurors in order to try the said issues; and have you then and there the names, additions, and places of abode of the said honest and lawful men whom you shall so cause to come to try the said issues, and this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this 13th day of November, A. D. 1843, and in the sixty-eighth year of the independence of the said United States.

FRA. HOPKINSON,
Clerk circuit court.

Marshal's return.

1. Charles Bell, gentleman, George st. and Schuylkill, 7th.
2. George C. Baker, brass founder, 470, North Front st.
3. John Bayard, gentleman, 178, Chestnut st.
4. Miles N. Carpenter, grocer, 2d st., above Arch.
5. Thomas Copeland, gentleman, Carpenter st. and 7th.
6. James Dunlap, merchant, 10th st. and Filbert.
7. William Duncan, gentleman, 3, Marshall st.

8. Peter Dunworth, merchant, 7, Coomb's alley.
9. John Eckey, merchant, 10th and Fitzwater.
10. Adam Evenly, merchant, Market st., near 6th.
11. William Field, clerk, Juliana and Wood sts.
12. Thomas B. Florence, clerk, 48, Lombard st.
13. Bartholomew Graves, gentleman, 272, N. 6th st.
14. Charles Graeff, gentleman, Arch st., near 9th.
15. Wm. Sayre Heysham, accountant, 72, South Third st.
16. Thomas J. Heston, accountant, Blockley.
17. John Hentz, accountant, 10th, near Spring Garden st.
18. Samuel Hentzleman, physician, 6th, near Chestnut st.
19. John Kerlin, general agent, 95, South 3d st.
20. Joseph L. Kay, shipmaster, Lombard st., 123.
21. Peter Keller, painter, 116, Cherry st.
22. George F. Lehman, physician, 144, Pine st.
23. Alexander McCay, broker, Schuylkill, 7th, and Ann st.
24. James McDonough, merchant, Southwark.
25. John Middleton, jr., carver and gilder, 6th st., above Market.
26. Anthony H. Morris, gentleman, 30, North 5th st.
27. Daniel K. Miller, gentleman, 127, Dylwin st.
28. George Plitt, gentleman, Chestnut, above 6th.
29. Thomas Rush, gentleman, 9th, below Noble st.
30. Abraham Ritter, importer, 12th, above Cherry st.
31. George Swartz, gentleman, 66, Noble st.
32. Frederick Stoever, merchant, 204, Market st.
33. Stevenson Smith, gentleman, 379, Spruce st.
34. John Treiney, agent, Spring Garden.
35. Thomas Temple, collector, 412, No. 9th st.
36. A. Mindert Wilson, gentleman, Wood and Marshall st.
37. David Weatherby, merchant, 10th and Vine st.
38. Stafford Wager, merchant, Decatur st.
39. William Young, merchant, 225, So. Front st.
40. George Dergler, innkeeper, Callowhill st., nr. 4th.

COHEN et al.
vs.
GRATZ et al.

Circuit court, April sessions, 1839, No. 1, in equity.

Interrogatories to be administered to witnesses to be produced and examined on behalf of the complainants, at Catawissa, Columbia county, Pennsylvania.

Interrogatory 1. Do you know the parties, complainants or respondents, any or which of them?

2. Have you any knowledge of the value of lands in the neighborhood of Catawissa? State your means of knowledge, your occupation, the place of your residence, and the length of time you resided there or in the neighborhood.

3. Have you any knowledge of three adjacent tracts of land, nearly

arable, and in the neighborhood of Catawissa, late the estate of Joseph [illegible], deceased, and since claimed by Simon Gratz, and by him sold to George A. Frick and W. G. Hurley? State the quantity of arable land, of timber, its contiguity to roads, its distance from Catawissa, and its exact situation; if there be any and what ore or minerals on the said lands, or what other, or if any, advantages it possesses.

4. What was the value of said land in February or April, 1833; what has been the value of the land since, particularly in January, 1839; what was it at the time of the sale by Simon Gratz?

Interrog. 5. Can you state the value of lands of similar quality in the neighborhood? State the market to which the produce of the same can most conveniently be taken.

6. What does the produce of a farm usually bring at Catawissa; is the market there a good one, or otherwise; is there a ready sale for all the produce at that market?

7. At what rate can lime be furnished for the use of said tracts; how near are they to lime-kilns? State generally the advantages, if any, it has in that respect.

8. How and by whom are the lands in that immediate neighborhood holden; are there many tracts for sale, or are they owned by substantial farmers?

9. Are there or are there not difficulties in obtaining and purchasing lands in that neighborhood?

10. Into how many farms could those tracts be advantageously divided?

11. Was the sale by Simon Gratz public or private; was there any public advertisement of the tracts being for sale?

12. State any thing further you may know material to the complainants, as fully as if you had been thereto particularly interrogated.

THOMAS A. BUDD,
BENJ. TILGHMAN.

29th Dec'r, 1843.

JAMES PLEASANTS, esq.,
of Catawissa, Columbia county, Pennsylvania,
Plaintiffs' Commissioner.

COHEN et al.
vs.
GRATZ et al.

Circuit court, April sessions, 1839, No. 1, in equity.

Interrogatories to be administered to witnesses to be produced, sworn or affirmed, and examined on behalf of the complainants, under a commission to Swineford town, Union county, Pennsylvania.

Interrogatory 1. Do you or do you not know the parties, complainants or respondents, any or which of them, and how long have you known them, or either of them?

Interrogatory 2. Have you or have you not any knowledge of certain

tracts or parts of tracts of land situate in Union, Juniata, or Mifflin counties, or either of them, late the property of Joseph Simon, deceased, the title whereto has been claimed, since February or April, 1833, by Simon Gratz, or his alienees; do you or do you not know the value of those lands, or any part of them, in February or April, 1833, or about January, 1839, or at any time since, or at the present time? If aye, state your knowledge, and particularly the value of them, or any part thereof, at the time of the sale made by Simon Gratz or his executors, or by the agent of him or them. State the situation of those lands, their quality, the improvements thereon in February, 1833; what public roads, if any, are contiguous thereto, and the sales made thereof, and to whom.

Interrogatory 3. Have you or have [you] not any knowledge of the price or value of the lands adjoining the tract belonging to Joseph Simon's estate? If aye, state your means of knowledge, and what sales have been made at or about, or since February, 1833; at what times, at what prices, and to whom.

Interrogatory 4. Were or were not the sales made by Simon Gratz or his executors, or his or their agents, effected at public or private sales; were or were they not advertised for sale; were or were not any person or persons interested in those sales directly or indirectly, either in whole or in part, other than the purchasers named in the deed; and was there any agreement, either written or verbal, that any other person should, at any time, become in any way interested? If aye, state the name of such person or persons, and the nature and amount of his or their interest.

Interrogatory 5. If you know any thing further, material or advantageous to the complainants, state your knowledge as fully as if you had been thereto more particularly interrogated.

Complainants name Charles Higgins, esq., of Sunbury, Northumberland county, Pa., and Absalom Swineford, esq., of New Berlin, Union co., Pennsylvania, or either of them, commissioners.

BENJ. TILGHMAN,
THOMAS A. BUDD,
Complainants' solicitors.

29th Dec., 1843.

COHEN
vs.
GRATZ.

Circuit court, U. S., April sessions, 1839, No. 1, in equity.

Defendants' cross interrogatories to witnesses on behalf of plaintiff, under commission to Swineford, Union county.

1. What is your age, place of residence, and occupation; how long have you resided where you now reside; and where did you reside previously; what were your residence and occupation [in] 1833 and 1839, respectively?

2. If you answer affirmatively any part of the plaintiff's fourth inter-

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rogatory, then state particularly your means of knowledge; whether the agreements there referred were in writing; if in writing, when, where, and under what circumstances you saw the same.

3. If you state that you have any knowledge of the value in 1833, 1839, or at the present time, of the lands referred to in the plaintiff's second interrogatory, describe the said tracts of land, particularly distinguishing each.

4. If you have any knowledge of said lands, state particularly the improvements made thereon since 1833, and by whom made; what was their condition then, as respects fences and buildings, and what is their condition now.

5. Do you know any other matter or thing material or advantageous to the defendants? If yea, state the same, as if particularly interrogated thereto.

Defendants' commissioner, Charles Higgins, esq. (Defendant notes an objection to the second and fourth interrogator[ies,] so far as they inquire into matters of hearsay.)

W. B. REED,
MEREDITH,
Sol'rs for executors of S. Gratz, def'ts.

COHEN
vs.
GRATZ.

Circuit court of the U. S., April sessions, 1839, No. 1, in equity.

Defendants' cross interrogatories to witnesses, under commission to Catawissa, Columbia county.

1. Where did you reside in 1833, and what was your occupation; were you then, and are you now, an owner of land in the neighborhood of Catawissa, or elsewhere; were you then, or have you ever been, a tenant on any of the lands belonging to or claimed by Simon Gratz, in Columbia county; if yea, when and under what circumstances did you cease to be such tenant? Answer particularly.

2. What has been your occupation from 1833 to this time?

3. Is there or is there not a great difference in the value of farms and their product in the neighborhood of Catawissa?

4. What public improvements have been made or attempted in the neighborhood of Catawissa since 1833?

5. Has or has not the Susquehanna, or, as it is commonly called, the Tide-water canal, been constructed since 1833, and when; and does not it open a new avenue to market for the produce of the counties on the Susquehanna river?

6. What is the condition of the roads leading from the lime kilns to the three tracts of land in question; what was their condition in 1833 and in 1836?

7. What was the condition of these tracts, as respects fencing, improvements, and cultivation, at the time of the sale to Frick & Hurley, and what is their condition in these respects now?

8. If you state in answer to plaintiff's 10th interrogatory that these tracts can be advantageously divided, then state particularly how such division can be made, and what improvements each of such proposed divisions would comprise.

9. If you answer plaintiff's fifth interrogatory, state who is or are the owners of similar tracts, and their situation and improvements.

10. Were there or were there not difficulties in obtaining and purchasing lands in that neighborhood in 1833, and at the time of the sale to Frick & Hurley.

11. What was the condition of the ore and minerals on said tracts in 1833, 1836, and 1839, and what is their condition now?

12. Do you know any other matter or thing material to said defendants? If yea, state the same, as if particularly interrogated thereto.

Defendants join in appointing James Pleasants, esq., com'r.

W. B. REED,
MEREDITH,
Sol'rs. for S. Gratz's ex'rs.

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, April session, 1839.

SAMUEL M. COHEN and Eleazer L. Cohen, citizens of the State of New Jersey,
vs.
SIMON GRATZ, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, citizens of the State of Pennsylvania. } No. 1. Equity.

The President of the United States, to Charles Higgins, esq., of Sunbury, Northumberland county, Pennsylvania, and Absalom [L. S.] Swineford, esq., of New Berlin, Union county, Pennsylvania, or either of them, commissioners named by and on behalf of the complainants; and to Charles Higgins, esq., commissioner named by and on behalf of the respondents:

Know ye, that in confidence of your prudence and integrity, we have given unto you, and by these presents do give unto you, full power and authority, in pursuance of a rule lately made in the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain action in equity therein depending, wherein the said Samuel M. Cohen and Eleazer L. Cohen are complainants, and the said Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, are respondents, to call before you, at a certain day and place by you for that purpose to be appointed, all and every person and persons who may be named to you

by the said complainants as witnesses in the said action, and then and there to examine them on their respective oaths and affirmations, on certain interrogatories hereunto annexed, touching the premises, and to reduce their testimony to writing; and when you shall have so done, you are to send the same to the said circuit court, closed up, and under your seals, plainly and distinctly set, together with this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this second day of January, A. D. 1834, and in the sixty-eighth year of the independence of the said United States.

FRA. HOPKINSON,
Clerk circuit court.

Circuit court, April session, 1839.

COHEN et al. vs. GRATZ et al. } No. 1. In equity.

Interrogatories to be administered to witnesses to be produced, sworn or affirmed, and examined, on behalf of the complainants, under a commission to Swineford town, Union county, Pennsylvania.

Interrogatory 1st. Do you or do you not know the parties, complainants or respondents, any or which of them; and how long have you known them, or either of them?

Interrogatory 2d. Have you or have you not any knowledge of certain tracts, or parts of tracts, of land, situate in Union, Juniata, or Mifflin counties, or either of them, late the property of Joseph Simon, deceased, the title whereto has been claimed, since February or April, 1833, by Simon Gratz, or his alienees? Do you or do you not know the value of those lands, or any part of them, in February or April, 1833, or about January, 1839, or at any time since, or at the present time? If aye, state your knowledge, and particularly the value of them, or any part thereof, at the time of the sale made by Simon Gratz, or his executors, or by the agent of him or them. State the situation of those lands, their quality, the improvements thereon in February, 1833; what public roads, if any, are contiguous thereto, and the sales made thereof, and to whom.

Interrogatory 3d. Have you or have you not any knowledge of the price or value of the lands adjoining the tract belonging to Joseph Simon's estate? If aye, state your means of knowledge, and what sales have been made at, or about, or since, February, 1833; at what times, at what prices, and to whom.

Interrogatory 4th. Were or were not the sales made by Simon Gratz, or his executors, or his or their agents, affected at public sales or private sales; were or were they not advertised for sale; were or were not any person or persons interested in those sales, directly or indirectly, either in whole or in part, other than the purchaser named in the deed; and was there any agreement, either written or verbal, that any other person

should at any time become in any way interested? If aye, state the name of such person or persons, and the nature and amount of his or their interest.

Interrogatory 5th. If you know any thing further material or advantageous to the complainants, state your knowledge as fully as if you had been thereto more particularly interrogated.

Complainants name Charles Higgins, esq., of Sunbury, Northumberland county, Pennsylvania, and Absalom Swineford, esq., of New Berlin, Union county, Pennsylvania, or either of them, commissioners.

BENJ. TILGHMAN,
THOMAS A. BUDD,
Complainants' solicitors.

Circuit court, U. S., April session, 1839.

COHEN vs. GRATZ. } No. 1. In equity.

Defendants' cross interrogatories to witnesses on behalf of the plaintiff, under commission to Swineford, Union county.

1. What is your age, place of residence, and occupation; how long have you resided where you now reside, and where did you reside previously; what were your residence and occupation [in] 1833 and 1839, respectively?

2. If you answer affirmatively any part of the plaintiff's fourth interrogatory, then state particularly your means of knowledge; whether the agreement there referred to *were* in writing; if in writing, when, where, and under what circumstances you saw the same.

3. If you state that you have any knowledge of the value, in 1833, 1839, or at the present time, of the lands referred to in the plaintiffs' second interrogatory, describe the said tracts of land, particularly distinguishing each.

4. If you have any knowledge of said lands, state particularly the improvements made thereon since 1833, and by whom made; what was their condition then as respects fences and buildings, and what is their condition now.

5. Do you know any other matter or thing material or advantageous to the defendants? If yea, state the same as if particularly interrogated thereto.

Defendants' commissioner, Charles Higgins, esq. (Defendant notes an objection to the second and fourth interrogatory, so far as they inquire as to matters of hearsay.)

W. B. REED,
MEREDITH,
Solicitors for exe's of S. Gratz, dec'd.

A true copy from the original filed.

FRA. HOPKINSON,
Clerk circuit court.

Jan'y 15, 1844.

The execution of the foregoing commission appears in a certain schedule hereto annexed.

CHARLES W. HIGGINS,
A. SWINEFORD.
Commissioners.

Deposition of witnesses produced, sworn, affirmed, and examined, on the twenty-third day of January, A. D. eighteen hundred and forty-four, at the house of Henry A. Smith, in the town of Swinefordstown, in the county of Union, and State of Pennsylvania, by virtue of a commission issued from the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, to Absalom Swineford and Charles W. Higgins directed, for the examination of witnesses in a certain cause depending in said court, wherein Samuel M. Cohen and Eleazer L. Cohen, citizens of the State of New Jersey, are complainants, and Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachael M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, citizens of the State of Pennsylvania, are defendants.

Henry Rearick, farmer, aged eighty-one years, of Beaver township, Union county, State of Pennsylvania, being produced, and sworn, and examined, on behalf of the complainants, deposeth as follows, viz:

1. To the first interrogatory on the part of the complainants he answers as follows, viz: I do not know either of the parties, complainants or defendants.

2. To the second interrogatory on the part of the complainants he answers as follows, viz: I know land in Beaver township, Union county, aforesaid, late the estate of Joseph Simon, deceased; the land comprises several tracts; one is occupied by John Weider, one by Henry Goss, one by Isaac Gearhart, one by Charlotte Margeritz, one by David Fissler, one by Adam Baker, one by Daniel Puis, one by Nicholas Reitz, one by John Laher, one by George Kealy, one by John Baker, one by Jacob Speiglemeyer, one by Daniel Koch, one by Jacob Stump, one by Henry Ritter, one by George Ritter; Feese's tavern is situated on one of the tracts. I know nothing about Simon Gratz having owned the land; I heard of one Phillips claiming the land; I have heard that Mr. Middleswarth acted as agent for the sale of the land; these lands in 1833 were worth from eighteen to twenty dollars per acre, taking the whole body together; in 1839 they were worth about the same price, and they have not varied in price since; some of the land is level and some broken and hilly; the soil is generally a gravel; it is of a pretty good quality; and produces wheat, corn, and other grain; the ground is not stony, and can all be cultivated; the improvements in 1833 were in a middling condition, some of them good, some bad; the fences were generally good; they were better on these lands than on other lands in the neighborhood. The stage road from Northumberland to Lewistown run through

the land, and several county roads run through [the] land along the lands were sold at various times to the persons I have mentioned in the foregoing part of this answer. The tavern stand occupied by Feese is as good a tavern stand as there is between Northumberland and Lewistown, except New Berlin and the other towns along the road. The soil of the land is much improved by liming; the tenants are now putting lime on the land; it is found within two miles of the land.

3. To the third interrogatory on the part of the complainants he answers as follows, viz: The land adjoining this body of land, belonging to the estate of Simon is not as good as it; I know of some sales made of land adjoining, but do not know the prices.

4. To the fourth interrogatory on the part of the complainant he answers as follows, viz: The sales were not made by public vendue; I think what Middleswarth sold was sold by him privately; I never heard of his advertising any of the land; I have no knowledge relative to any other persons being interested in the purchase of the land than those named in the deeds; I think no one sought an interest in the sales but Middleswarth, but I know nothing about it except mere surmise; I know nothing about any agreement relative to the purchases.

5. To the fifth interrogatory on the part of the complainants he answers as follows: I know nothing further material to the matter in controversy.

1. To the first interrogatory on the part of the defendant he answers as follows, viz: I am eighty-one years of age, I live in Beaver township, Union county, Pennsylvania, about six miles from Simon's land; my occupation has always been that of a farmer; I have lived where I now reside forty-eight years; before that I lived in Berks county; I was a farmer in 1833, and in 1839, respectively, and then lived where I now live.

2. To the second interrogatory on the part of the defendants he answers as follows: I have stated that I knew nothing relative to any agreements about the purchase of the land. I resided so near the land that if any public sale had taken place I would have heard of it; I have not been absent from my residence for more than three or four days, for fifteen years.

3. To the third interrogatory on the part of the defendants he answers as follows, viz: I cannot describe the land more particularly than I have already done in my answers to the interrogatories on the part of the complainants. I was tax collector in 1826, and then went over all the land to give notice to the tenants; the land, by reason of improvement and cultivation, is worth two or three dollars more than it was in 1833.

4. To the fourth interrogatory on the part of the defendants he answers as follows, viz: The buildings and fences were in pretty good order in 1833; it is about three years since I passed by the land, then the fences and the buildings were perhaps better than in 1833; Oultz, sr., has built a barn on the tract where Feese's tavern is, and also repaired

(Charles W. Higgins. A. Swineford.)

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the tavern stand well; Daniel Price has built a good barn since; there has been a meeting-house built on the land about one mile above Feese's tavern. These improvements, except the meeting-house, have been made since 1833. Since that time Andrew Oultz, jr., has built a house and barn on the land; another person of the name of Oultz has built a house and barn. I do not recollect any other improvements since that time; the wood land that remains is very good.

5. To the fifth interrogatory on the part of the defendants he answers as follows, viz: I know nothing more material to the defendants in the said action.

[Name illegible.]

CHARLES W. HIGINS,
A. SWINEFORD.

James Barlin, blacksmith, aged fifty-two years, of Swinefordstown, Union county, Pennsylvania, being produced, affirmed, and examined on *examined on* behalf of the complainants, deposeth as follows, viz:

1. To the first interrogatory on the part of the complainants he answers as follows, viz: I don't know any of the parties, complainants or respondents.

2. To the second interrogatory on the part of the complainants he answers as follows, viz: I know of certain tracts of land in Beaver township, Union county, which the persons living on said belonged to Joseph Simons—the Feese tract, the Musser tract; George Knipp lives on a tract; Ritter lives on a tract; Henry Goss lives on one of the tracts; Herman Margeritz lives on one, and Isaac Gearhart occupied one formerly; David Fissler lives on a tract now, and Nicholas Reitz has a tract; Daniel Price has one; I think Adam Baker has one tract; Daniel Koch has a tract; Jacob Stump has a tract; Feese's tavern is on the same body of land. I heard it said that Simon Gratz claimed the lands. In February, 1833, I suppose the lands I have mentioned on an average were worth fifteen or sixteen dollars an acre, and perhaps could not be bought for that; lands rose in value from 1833 to 1839; the lands are worth now about the same they were in 1833, and perhaps more by reason of improvements; I don't know when the lands were sold. Middleswarth told me himself he had sold them for Gratz; some of the land is level, most too level; and some hilly and rolling; it is about second rate land, a gravel soil, not stony. In February, 1833, there was a good log house where Feese's tavern is, and a good stable on; at Stump's there was a good log house too, and a ; at Knipp's there was a good house and barn; and the houses and barns on the land generally were good. On the Musser there was a saw-mill; a church, about one mile above Feese's, was built about 1817. The public road from Northumberland to Lewistown runs through the land, and one from New Berlin runs through and into the other, and several other public roads run through in different parts and directions; I know nothing particularly about sales.

(Charles W. Higins. A. Swineford.)

3. To the third interrogatory on the part of the complainants he answers as follows, viz: I know nothing of the value of the lands adjoining, particularly, or any sales thereof.

4. To the fourth interrogatory on the part of the complainants he answers as follows, viz: I never saw or heard of any advertisements. I understood Middleswarth sold them at private sale. I know nothing in relation to the remaining parts of this interrogatory.

5. To the fifth interrogatory he answers as follows, viz: I know nothing more material.

Cross interrogatories.

1. To the first interrogatory on the part of the defendants he answers as follows, viz: My age is fifty-two years; residence, Swinefordstown; occupation, blacksmith; have resided twenty-eight years; previous to that in Buffalo valley, Union county. In 1833 and 1839, lived in Swinefordstown, and followed blacksmithing.

2. To the second interrogatory on the part of defendants he answers as follows, viz: I know nothing in relation to the subjects referred to in this interrogatory.

3. To the third interrogatory on the part of defendants he answers as follows, viz: I cannot describe the lands more particularly than I have already in my answer to the complainants' second interrogatory.

4. To the fourth interrogatory on the part of defendants he answers as follows, viz: Margeritz built a house since 1833; Koch, also; Price, a barn; Ulsh repaired Feese's tavern stand, and built a new barn. The fences were good in 1833, when I came along; I saw no bad fences; the buildings were good too. I was along the lands last this fall a year ago; the condition of fences and buildings was good then.

5. To the fifth interrogatory he answers: I know nothing more material or advantageous to defendants.

JAMES BARLIN.

A. SWINEFORD.

After the foregoing testimony was taken and reduced to writing, the undersigned commissioners adjourned their session to meet at the office of Absalom Swineford, in New Berlin, Union county, Pennsylvania, on to-morrow, the twenty-fourth inst., at 10 o'clock, A. M.

CHARLES W. HIGINS,
A. SWINEFORD.

January 24, 1844.—Met in pursuance of the adjournment, at the office of A. Swineford, in New Berlin, at ten o'clock.

CHARLES W. HIGINS.

Michael H. Weaver, surveyor, aged forty-two years, of New Berlin, Union county, Pa., being produced, affirmed, and examined, on the part of complainants, deposeth as follows, viz:

(Charles W. Higins. A. Swineford.)

1. To the first interrogatory on the part of complainants he answers as follows, viz: I don't know any of the parties, complainants or defendants.

2. To the second interrogatory on the part of complainants he answers as follows, viz: I know lands in Beaver township, Union county, said to belong to Gratz. I know the James Ferguson tract, on which Feese's tavern stands; the Stump tract, Margeritz tract, Ritter's tract, Goss tract, John Weader's tract, (the Trent tract.) Stump is on the Dunagan tract; Ritter immediately above him; John Baker, Adam Baker, Daniel Fiesler, Daniel Price, on the Cox tract, are some of these. I am generally acquainted with all those tracts; have surveyed some of them. I have been more particularly acquainted with them for eight or nine years. I cannot state the value of them in 1833; from 1837 to 1839, those lands that are reasonably improved in the neighborhood of Feese and above it, and contiguous to the Lewistown road, the value of those lands, on an average, was from fifteen to twenty-five dollars. At the present time I consider them worth as much as then; they have not depreciated, but rather increased in value. I know of a sale made in 1836 or 1837, by Ner Middleswarth to Weader. At that time the lands were worth about the same, but that tract was not worth as much as some of the others. Perhaps these lands would not sell for the amount I have mentioned now, but I suppose they are worth more than at that time. The lands are mostly hilly; some more so than others; not first-rate lands; gravel soil; they lie in the neighborhood of a fine limestone region; the lime acts well on those lands; meadow lands on most all those tracts; the improvements in 1833 were not as good as they are now. On the Feese tract, not so good; on the Stump and Ritter tracts, slight improvements have been made since. The public road, from New Berlin to Lewistown, runs through the land, and there are two other roads running through to Lewistown; there are different cross roads. I know nothing more about the sales of the land than what I have stated.

3. To the third interrogatory on the part of the complainants he answers as follows, viz: I have some knowledge of the adjoining lands; they are not worth so much; they are not so good. I have been on them surveying, and engaged in hunting up lands for different persons. I have been surveying on both sides of these lands and on them, and also run roads through them as a surveyor. I know of sales made of lands adjoining, but nothing about the conditions on which they were sold.

4. To the fourth interrogatory on the part of complainants he answers as follows, viz: I know nothing in relation to this interrogatory.

5. To the fifth interrogatory on the part of complainants he answers as follows, viz: Feese's stand is considered a good tavern stand. I have known it since 1825. I consider it the best tavern stand between this and Lewistown, including the taverns between those places. It is the half-way house between New Berlin and Lewistown—general stopping

place; the stage has always stopped there since I know. The land is reasonably well timbered. The fences have generally been tolerably good for eight or ten years back; the buildings were reasonably good from eight to ten years ago, but have been improved since. A new barn has been built on the Feese tract since that time, and house repaired.

Cross interrogatories.

1. To the first interrogatory on the part of the defendants he answers as follows: My age is forty-two years; occupation, surveyor and scrivener; residence in New Berlin, and have resided here eight years *again* spring; before that I resided in West Buffalo township; 1833, in Mifflinsburg, Union county, and taught school; 1839, in New Berlin and followed surveying; was deputy surveyor of Union county from 1836 to 1839.

2. To the second interrogatory on the part of defendants he answers as follows, viz: I have stated that I knew nothing in relation to plaintiffs' fourth interrogatory.

3. To the third interrogatory on the part of defendants he answers as follows, viz: I cannot describe the lands more particularly than I have done in answer to the plaintiffs' interrogatories, except that the Feese tract, before Ulsh bought it, was not in as good a condition and state of cultivation as it has been since.

4. To the fourth interrogatory on the part of defendants he answers as follows, viz: In 1833 the fences and buildings were in tolerable order. I have seen but little improvement in the fences since that; the buildings have been considerably improved. On the Feese tract the improvements were made by Ulsh; there are improvements on the other tracts, but I don't know by whom made; two or three houses have been built on the other tracts.

5. To the fifth interrogatory on the part of defendants he answers as follows, viz: There is a saw-mill on the tract lying on the north side of these tracts, and a grist-mill on the tract adjoining the south.

M. H. WEAVER.

We, the undersigned commissioners, do certify, that the foregoing testimony was duly taken by us, and reduced to writing, at the times and places mentioned in the said schedule, the witnesses having been first duly sworn or affirmed.

CHALES W. HIGGINS, [L. S.]
Jan'y 24, 1844. ABSALOM SWINEFORD. [L. S.]

(Charles W. Higins. A. Swineford.)

In the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, April sessions, 1839.

SAMUEL M. COHEN, and Eleazer L. Cohen, citizens of the State of New Jersey,
vs.
SIMON GRATZ, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, citizens of the State of Pennsylvania. } No. 1. In equity.

The President of the United States, to James Pleasant, esquire, of Catawissa, Columbia county, Pennsylvania, commissioner named by and on behalf of the complainants and respondent. [L. S.]

Know ye, that in confidence of your prudence and integrity, we have given unto you, and by these presents do give unto you, full power and authority, in pursuance of a rule lately made in the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, in a certain action in equity therein depending, wherein the said Samuel M. Cohen and Eleazer L. Cohen are complainants, and the said Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, are respondents, to call before you, at a certain day and place by you for that purpose, to be appointed, all and every person and persons who may be named to you by the said complainants, as witnesses in the said action, and then and there to examine them on their respective oaths and affirmations, on certain interrogatories, hereunto annexed, touching the premises, and to reduce their testimony to writing; and when you shall have so done, you are to send the same to the said circuit court, closed up, and under your seals, plainly and distinctly set, togther with this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Philadelphia, this second day of January, A. D. 1844, and in the sixty-eighth year of the independence of the said United States.

FRA. HOPKINSON,
Clerk circuit court.

Circuit court, April sessions, 1839.

COHEN et al.
vs.
GRATZ at el. } No. 1. In equity.

Interrogatories to be administered to witnesses, to be produced and examined on behalf of the complainants, at Catawissa, Columbia county, Pennsylvania.

Interrogatory 1st. Do you know the parties, complainants or respondents, any or which of them?

2. Have you any knowledge of the value of lands in the neighborhood of Catawissa? State your means of knowledge, your occupation, the place of your residence, and the length of time you resided there, or in the neighborhood.

3. Have you any knowledge of three adjacent tracts of land, nearly opposite and in the neighborhood of Catawissa, late the estate of Joseph Simon, (dec'd,) and since claimed by Simon Gratz, and by him sold to George A. Frick and W. G. Hurley? State the quantity of arable land, of timber, its contiguity to roads, its distance from Catawissa, and its exact situation; if there be any and what ore or minerals on the said lands, or what other, if any, advantages it possesses.

4. What was the value of said land in February or April, 1833; what has been the value of the land since, particularly in January, 1839; what was it at the time of the sale by Simon Gratz?

Interrogatory 5. Can you state the value of lands of similar quality in the neighborhood? State the market to which the produce of the same can most conveniently be taken.

6. What does the produce of a farm usually bring at Catawissa; is the market there a good one or otherwise; is there a ready sale for all the produce at that market?

7. At what rate can lime be furnished for the use of said tracts; how near are they to lime kilns? State generally the advantages, if any, it has in that respect.

8. How and by whom are the lands in that immediate neighborhood holden; are there many tracts for sale, or are *the* owned by substantial farmers?

9. Are or are there not difficulties in obtaining and purchasing lands in that neighborhood?

10. Into how many farms could those tracts be advantageously divided?

11. Was the sale by Simon Gratz public or private; was there any public advertisement of the tracts being for sale?

12. State any thing further you may know material to the complainants, as fully as if you had been thereto particularly interrogated.

29th Dec., 1843.

THOS. A. BUDD,
BENJ. TILGHMAN,
JAMES PLEASANTS, Esq.,
Of Catawissa, Columbia co., Pennsylvania, plaintiffs' com.

Circuit court, U. S., April sessions, 1839.

COHEN vs. GRATZ. } No. 1. In equity.

Defendants' cross interrogatories for witnesses under commission to Catawissa, Columbia county.

1. Where did you reside in 1833, and what was your occupation; were you then, and are you now, an owner of land in the neighborhood of

Catawissa, or elsewhere; were you then, or have you ever been, a tenant on any of the lands belonging to or claimed by Simon Gratz, in Columbia county; if yea, when and under what circumstances did you cease to be such tenant? Answer particularly.

2. What has been your occupation from 1833, to this time?

3. Is there or is there not a great difference in the value of farms and their product in the neighborhood of Catawissa?

4. What public improvements have been made or attempted in the neighborhood of Catawissa since 1833?

5. Has or has not the Susquehannah, or, as it is commonly called, the Tide-water canal, been constructed since 1833, and when; and does not it open a new avenue to market for the produce of the counties on the Susquehannah river?

6. What is the condition of the roads leading from the lime kilns to the three tracts of land in question; what was their condition in 1833 and in 1836?

7. What was the condition of these tracts as respects fencing and improvements and cultivation at the time of the sale to Frick and Hurley, and what is their condition in these respects now?

8. If you state in answer to the plaintiffs' tenth interrogatory that these tracts can be advantageously divided, then state particularly how such division can be made, and what improvements each of such proposed divisions would compriee.

9. If you answer plaintiffs' fifth interrogatory, state who is or are the owners of similar tracts, and their situation and improvement.

10. Were there or were there not difficulties in obtaining and purchasing lands in that neighborhood in 1833, and at the time of the sale to Frick and Hurley?

11. What was the condition of the ore and minerals on said tracts in 1833, 1836, and 1839, and what is their condition now?

12. Do you know any other matter or thing material to said defendant? If yea, state the same as if particularly interrogated thereto.

Defendants join in appointing James Pleasants, esq., commissioner.

W. B. REED,
MEREDITH,
Solicitors for S. Gratz's executors.

A true copy from the original, filed January 15, 1844.

FRA. HOPKINSON,
Clerk circuit court.

Depositions of witnesses produced, sworn, (or affirmed,) and examined on the twenty-fifth, twenty-sixth, and twenty-seventh days of January, in the year of our Lord one thousand eight hundred and forty-four, at the office of James Pleasants, in the town of Catawissa, in Columbia county, State of Pennsylvania, by virtue of a commission issuing from the circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit, to James Pleasants, esquire, of Cata-

wissa, Columbia county, Pennsylvania, commissioner named by and on behalf of the complainants and respondents, directed for the examination of witnesses, in a certain cause depending in said court, wherein Samuel M. Cohen and Eleazer L. Cohen, citizens of the State of New Jersey, are complainants, and Simon Gratz, Leah Phillips, John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, Joseph Gratz, Jacob Gratz, Sarah M. Cohen, Rebecca M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, and Joseph S. Cohen, citizens of the State of Pennsylvania, are respondents.

John Richards, of the township of Montorn, in the county of Columbia, State of Pennsylvania, farmer, aged fifty-seven years, or thereabouts, being produced, sworn, and examined, on behalf of the complainants, deposeth as follows:

To the first interrogatory on the part of the complainants he answers as follows: I do not know any of the parties, complainants or respondents.

To the second interrogatory on the part of the complainants he answers as follows: I have a knowledge of the value of lands in the neighborhood of Catawissa; my means of knowledge are, that I am a farmer, and have followed the business from my boyhood, in the neighborhood of Catawissa, and the greater part of my life I lived within a very short distance of Catawissa, not over two or three miles distant.

To the third interrogatory on the part of the complainants he answers as follows: I have a knowledge of the three tracts of land mentioned in this interrogatory; there is not a great deal of arable land on the three tracts. I cannot state the number of acres without measuring it. I should judge it was all timber land, except about one hundred and fifty acres; there is a public road through the land, which branches on the land into two public roads, one leading towards Danville, and the other leading towards Bloomsburg; it is about one mile from the town of Catawissa; the lands lie on the top of a ridge, the river hill; take the body of it, it lays pretty much level, but at the lower end there is a deep hollow, and the land is somewhat rolling. I don't know of any ore on it. I suppose there is some on it. I do not know of any minerals on the lands. It possesses a good many advantages. It has very good springs of water on it; its timber land is of advantage to it; it is convenient to market; and near the north branch division of the Pennsylvania canal, lime stone may be had about a mile off from it, a little over a mile, which is of great use to this land; it adds to its productiveness; there is a great deal of timber on the land, white oak, pine, chestnut, chestnut oak, black oak, hickory; there is sufficient timber on it to erect several barns such as is now on the land. Of oak timber, twenty or thirty barns or more could be built, and of pine timber more than two such barns, I think, could be built. There is a great deal of very nice farm land on it; it is nice ploughing, not stony; there is some stone on it, which I consider an advantage for building purposes. A great deal of land can be cleared in which there would not be a stone

(James Pleasants, Commissioner.)

as big as my fist on twenty acres, or perhaps forty acres, for what I know; the land would divide to advantage into three farms; the springs and waters would suit; the lower tract would be the largest part; the land is now coming into good cultivation, and produces pretty well; they had very good rye on it last harvest, and very excellent clover, and one good field of corn, and one field of corn not good, and a middling crop of wheat. I think this good production may be attributed to good farming and to liming; the land is nearly four miles from Bloomsburg, and about eight miles from Danville.

To the fourth interrogatory on the part of the complainants he answers as follows: I don't think the land was worth more than eight dollars an acre in eighteen hundred and thirty-three. I mean, take the land in a body. I mean that in February and April of that year, the land was not worth more than eight dollars per acre. It is worth fifteen dollars an acre now, or more. I think it has not been worth more than that at any time since eighteen hundred and thirty-three. It was worth about twelve dollars per acre in January, eighteen hundred and thirty-nine. I think it was worth eight dollars when Simon Gratz sold it; I mean eight dollars per acre; the land was sold very cheap; I considered it very cheap, indeed.

To the fifth interrogatory on the part of the complainants he answers as follows: Other lands of similar quality with this land in the neighborhood are now worth from twelve to sixteen dollars per acre; in 1839 they were worth twelve dollars per acre; in 1837, about the same as in 1839; and in 1833, about eight dollars per acre. Catawissa would be the market to which this produce would be taken most conveniently.

To the sixth interrogatory on the part of the complainants he answers as follows: The price of produce of farms at Catawissa is regulated by the prices at Philadelphia and Baltimore. When wheat brings a dollar a bushel at Philadelphia, it will bring eighty-five cents at Catawissa market; it generally brings sixteen cents a bushel less at Catawissa than at Philadelphia; other kinds of grain at the same rates; there has all along been ready sale at Catawissa for farm produce.

To the seventh interrogatory on the part of the complainants he answers as follows: Lime can be delivered on the land at a little less than twelve and a half cents a bushel; I think for about eleven cents; the lands are about a mile and a half from lime kilns. It is about two miles to carry lime to the fields; lime improves the land in its quality, and this land is well adapted to lime.

To the eighth interrogatory on the part of the complainants he answereth as follows: The lands in the neighborhood are generally owned by substantial farmers who live on them themselves; none for sale.

To the ninth interrogatory on the part of the complainants he answers as follows: There are difficulties in purchasing lands in that neighborhood. I don't know of any for sale.

To the tenth interrogatory on the part of the complainants he answers

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as follows: As I said before, these tracts could be advantageously divided into three farms.

To the eleventh interrogatory on the part of the complainants he answers as follows: I did not see any advertisement of the sale by Simon Gratz. I can't answer whether the sale was public or private. Mr. Frick once mentioned to me that the land could be bought.

To the twelfth interrogatory on the part of the complainants he answers as follows: I know of no other matter or thing further than I have already stated, material to the complainants.

To the first cross interrogatory on the part of the respondents he answers as follows: In 1833, I resided on a farm in now Montorn township, on the road from Bloomsburg to Danville, where I now reside, which I then did and still do own. I followed farming in 1833. I never was a tenant on any lands belonging to or claimed by Simon Gratz.

To the second cross interrogatory on the part of the respondents he answers as follows: I have been a farmer from 1833 to this time, except one year I lived in Bloomsburg.

To the third cross interrogatory on the part of the respondents he answers as follows: There is a great difference in the value of farms and their products in the neighborhood of Catawissa.

To the fourth cross interrogatory on the part of the respondents he answers as follows: The Little Schuylkill and Susquehannah railroad was attempted to be made from Catawissa to Tamaqua since 1833; the canal was finished before that.

To the fifth cross interrogatory on the part of the respondents he answers as follows: The Tide-water canal from Columbia to Chesapeake has been made since 1833, and opens a new avenue to market for the produce of the counties on the Susquehannah river.

To the sixth cross interrogatory on the part of the respondents he answers as follows: The road from the lime kilns to the lands in question is on rising ground; but a good load can be hauled upon the road from Lazarus. The Lazarus road has been altered within a year. The roads were good and solid in 1833 and 1836—as good then as now.

To the seventh cross interrogatory on the part of the respondent he answers as follows: The fences were poor generally; when Frick and Hurley bought the improvements, were very poor. There were two old houses on it and one old stable *on it;* and the land was then, a good deal of it, in a poor state of cultivation. One Krum had possession of it before Frick and Hurley bought, and improved it some; fixed up the fences some, and had some clover there which looked very well. He rented it of Middleswarth. Krum took the crop away—straw and all; the clover remained—a ten acre field. The fences are generally good now, as far as I know. The buildings and improvements are good now; a good house and good barn; a spring house, wagon house, and corn crib. They

have cleared thirty or forty or forty-five acres on the land since Frick and Hurley bought; a good many fruit trees have been planted by them—apples and all kinds of fruit. The cultivation of the land now is pretty good. I hauled wheat off of that farm thirty-five years ago. There has been a good deal of lime hauled upon that farm since Frick and Hurley bought it. I can't tell the quantity; three or four fields that I recollect have been limed by them. I recollect five fields—may be more have been limed.

To the eighth cross interrogatory on the part of the respondents he saith: I cannot tell into what part on a division the improvements would fall. I think the house and barn would fall in the middle one of the divisions. There is a poor house on the eastern end, which would fall into the upper division. I don't know whether any part of the cleared land would fall in the lower or western division.

To the ninth cross interrogatory on the part of the respondents he answers as follows: Henry Kume is the owner of similar lands in the neighborhood. His land adjoins these on the west, further off from Catawissa, and lying on top of the same ridge. He has all kinds of buildings necessary for a farmer—house, barn, wagon house, spring house; and he has an orchard. Heinbach's heirs own similar land in the neighborhood on the same ridge. It has a good barn on it, not a very good house, a cider house, an orchard and meadow. William and Cadwallader Roberts own adjoining lands; it does not lie so well as the land owned by Hurly and Frick. James Dugan also owns adjoining lands of the same quality. The improvements of Roberts and Dugan are not so good as Heinback's and Krum's.

To the tenth cross interrogatory on the part of the respondents he answers as follows: Lands could not be conveniently bought in that neighborhood in 1833, and at the time of the sale to Frick and Hurley.

To the eleventh cross interrogatory on the part of the respondent he answers as follows: I don't know of any ore or minerals on the said tracts now; nor was there any known of there in 1833, 1836, or 1839.

To the twelfth cross interrogatory on the part of the respondents he answers as follows: I don't know of any other matter or thing material to the defendants or respondents.

JOHN RICHARDS,
JAS. PLEASANTS, *Com'r.*

William G. Quick, of the township of Montorn, in the county of Columbia, aged thirty years, or thereabouts, being produced, sworn, and examined, on the part of the complainants, deposeth as follows:

To the first interrogatory on the part of the complainants he answers as follows: I don't know the parties complainants or respondents.

To the second interrogatory on the part of the complainants he answers as follows: I have a knowledge of the value of lands in the neighborhood of Catawissa. My means of knowledge are, that I followed farming for nine years in Montorn township, within two miles

of Catawissa. I resided during that time on a farm in that township. I now reside in the same township. It was formerly a part of Hemlock township.

To the third interrogatory on the part of the complainants he answers as follows: I know the three tracts of land mentioned in this interrogatory. I cannot state the quantity of arable land with certainty in the three tracts. I should think there was one hundred and fifty acres now under cultivation. I can't state the quantity of timber land. The road from Catawissa, to intersect the road from Danville to Bloomsburg, passes through the lands. I should judge the land to be about a mile from Catawissa; the land lays well; it is somewhat rolling; it lies on a hill called the River ridge, about two and a half miles from Bloomsburg, and about eight miles from Danville, about three-quarters of a mile from the canal, about thirty-one miles from Pottsville. I don't know of any ore upon the lands, nor minerals. There are good springs of water on the tracts, and pretty good timber. There is some fine pine timber, fit for saw logs; a good many trees, and hickory and oak and timber of all kinds common to this section of the country. The farm is in what is called the Columbia county iron region. It is also not over two miles from good lime stone quarries and lime kilns, which I consider a great advantage to the lands, as lime has a greatly beneficial effect upon that land. I don't know the lines of the tracts, but I have been over pretty much of the lands, and almost all that I have seen of it is fit for cultivation. There is plenty of timber on the land to build several barns such as that now on the land. I should think there is pine enough to build several barns, and oak enough also. I mean that there is pine and oak enough for the purpose; but I never took sufficient notice to say whether there is enough of one kind or the other for that purpose. The land is of good quality for farming purposes.

To the fourth interrogatory on the part of the complainants he answers as follows: I should think the land was worth from ten to twelve dollars per acre, in 1833, in February and April. It is worth a great deal more now. I think it is worth twenty dollars an acre now. I would be willing to give that for it if I could. I think it was worth sixteen or seventeen dollars in January, 1839. I think it was not worth more when Mr. Gratz sold to Mr. Frick and Mr. Hurley than it was in 1833—say ten or twelve dollars an acre.

To the fifth interrogatory on the part of the complainants he answers as follows: Roberts' land, adjoining these lands—I mean such part of Roberts' land as can be cultivated—is worth twenty dollars per acre. My father's lands are of similar quality, and also such part of his land as can be cultivated is worth twenty dollars per acre. His land adjoins these lands in question. That part of his land as lies on top of the ridge is good farm land; but the east fall or declivity of the hill is rocky, and unfit for cultivation. Catawissa is the most convenient

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country market to which the produce of these lands can be taken, and Philadelphia and Baltimore the most convenient city markets.

To the sixth interrogatory on the part of the complainants he answers as follows: Market prices of produce vary very much at Catawissa. Wheat has been sold here within six years at a dollar and a half a bushel, and at another time as low as seventy-five cents a bushel, within the same period. Prices of all kinds of farm produce are regulated by Philadelphia prices. The Catawissa market is a good one; there is a ready sale here for produce brought to the market.

To the seventh interrogatory on the part of the complainants he answers as follows: I should suppose lime could be delivered on the lands in question at from ten to twelve cents a bushel. The fields are about a mile and three-quarters from the lime kilns. From the lands being in the neighborhood of lime kilns and lime stone quarries, so that lime can be had and delivered upon them at a low price, it is of very great advantage to the lands, as they are of a quality to be greatly benefitted by the use and application of lime; but I cannot make an estimate of the amounts to be used, or of the increase of value from this cause alone.

To the eighth interrogatory on the part of the complainants he answers as follows: The lands in that immediate neighborhood are, for the most part, occupied by the persons who own them. I don't know of any tracts about there for sale; they are generally owned by able farmers.

To the ninth interrogatory on the part of the complainants he answers as follows: It is difficult to obtain or purchase lands in that neighborhood.

To the tenth interrogatory on the part of the complainants he answers as follows: There is enough land for two large farms in these tracts. I do not know into how many farms the tracts could be advantageously divided; but I do know they could be divided into two good farms.

To the eleventh interrogatory on the part of the complainants he answers as follows: I do not know whether the sale to Mr. Frick and Mr. Hurley, by Mr. Gratz, was public or private. I don't know of any advertisements being made of the lands being for sale. I never saw any.

To the twelfth interrogatory on the part of the complainants he answers as follows: I cannot state any thing further material to the complainants, other than that there is another road running through the western part or end of the land, and intersecting the valley road at Danville. I think the timber land of these tracts is like that of other tracts in the neighborhood. It has been culled some, but not a great deal. Where the lands is new—that is, recently cleared—it produces good crops of wheat.

To the first cross interrogatory on the part of the respondents he answers as follows: I resided in Montorn township, in 1833, at my father's. I was then farming. I was not then, and am not now, an

owner of land in the neighborhood of Cattawissa or elsewhere. When I say I lived in Montorn township in 1833, it was then Hemlock township, which was divided subsequently, and my place of residence fell into Montorn township. I never was a tenant on any lands belonging to or claimed by Simon Gratz, in Columbia county.

To the second cross interrogatory on the part of the respondents he answers as follows: I followed farming from 1833 to 1839; and since that time I have been keeping a lock on the north branch division of the Pennsylvania canal in Montorn township.

To the third cross interrogatory on the part of the respondents he answers as follows: There is a great difference in the value of farms and their products in the neighborhood of Catawissa.

To the fourth cross interrogatory on the part of the respondents he answereth as follows: No public improvements have been made in the neighborhood of Cattawissa, since 1833. The North branch division of the Pennsylvania canal was finished before that time. The Little Schuylkill and Susquehannah railroad from Catawissa to Tamaqua was attempted, but failed.

To the fifth cross interrogatory on the part of the respondents he answers as follows: I think the Tide-water canal from Columbia to Chesapeake bay has been constructed since 1833, and it opens a new avenue to market for the country on the Susquehannah river. I can't say when it was opened.

To the sixth cross interrogatory on the part of the respondents he answers as follows: The roads from the lime kilns to the three tracts of land in question are a hill, and pretty much of a hill too. They are good solid roads. The one from Hartman's kilns is a steeper road than the one from Monser's kilns, called the Lazarus road. The latter is the longer road from the kilns to the fields. They are both public roads. The shorter road is just as it was in 1833 and in 1836; the other, Lazarus road, is within a few years, say two years, made easier to ascend than it was in 1833 and in 1836.

To the seventh cross interrogatory on the part of the respondents he answers as follows: At the time of the sale to Frick and Hurley, the fences on these tracts were very poor; the buildings, house, barn, and out-houses, were very poor at that time. There was no other barn then but a bit of a shed for a stable. The farm was also then in a bad condition as to cultivation. Now, the fencing is pretty good; and there is now a good farm-house and good barn and wagon sheds, and the farm is in good order now.

To the eighth cross interrogatory on the part of the respondents he answers as follows: From my knowledge of the lands, I would divide them into two nearly equal farms by a division line running about north and south; and, in such a division all the buildings would fall into the eastern division, and most of the farm land would also fall into that division.

To the ninth cross interrogatory on the part of the respondents he an-

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swers as follows: As I stated in my answer to complainant's fifth interrogatory, Roberts' lands and John Quick's lands, adjoining the lands in question, are the lands similar in quality with the lands in question. On Roberts' lands there are two houses; one a new log house, and [the] other an old house—a poor one. Their barn is also poor. Their land is in a good state of cultivation. John Quick's land is in middling good cultivation; not so good as Roberts' land—does not produce quite so good crops. His buildings are middling; he has two houses. My father, John Quick's situation is better than Roberts'. The buildings on the lands in question are better than either Roberts' or my father's. The soil on the lands in question is *in* the same in quality with that of Roberts and John Quick's, and is as good as the best of theirs. John Quick and Roberts, respectively, own the lands I refer to.

To the tenth cross interrogatory on the part of the respondents he answers as follows: There was no land for sale in that neighborhood that I know of in 1833, nor in 1837, when Frick and Hurley bought the lands in question; and of course there was difficulty in obtaining or purchasing land there then.

To the eleventh cross interrogatory on the part of the respondents he answers as follows. There was no ore or minerals that I know of on the tracts in question, in 1833, 1836, or 1839; nor is there any now that I know of.

To the twelfth cross interrogatory on the part of the respondents he answers as follows: I don't know of any other matter or thing material to the said respondents.

WM. J. QUICK,
JAS. PLEASANTS, *Commissioner.*

Philip Leesholts, of the town of Catawissa, aged forty-six years or thereabouts, being produced, sworn, and examined, on behalf of the complainants, deposeth as follows:

To the first interrogatory on the part of the complainants he answers as follows: I do not know the parties, complainants or respondents.

To the second interrogatory on the part of the complainants he answers as follows: I have some knowledge of the value of lands in the neighborhood of Catawissa. My means of knowledge are from having farmed about Catawissa for the last ten or twelve years, and from inquiring of the value of lands along, and from general observation. I am a farmer, and carry on a pottery, but do not work at it myself, in Catawissa, where I reside. I removed to Catawissa in 1828, and have resided here ever since.

To the third interrogatory on the part of the complainants he answers as follows: I know the lands inquired of in this interrogatory, though I have never been round and over the whole of them. I should think there *is* one hundred acres or more cleared on them. A great deal of them is in wood. I think that, with the exception of fifty or sixty acres at the lower end, it all admits of good cultivation, and if it was

cleared it would make good farm land. A road leading from Catawissa to the valley road runs through the land near to the buildings; the whole of it *lays* on a ridge between the canal and the valley road leading from Bloomsburg to Danville—I suppose not more than a mile and a quarter from the canal and road. It is nice rolling land, lying generally on the same level. It has rather a south exposure. I think generally it is a red-shell soil, though round the buildings it is somewhat clayey. The general character of the soil of these river hills about Catawissa is very good for farm lands; and these lands in question are as good as any of them; *lay* rather prettier than most of them, and are near the lime. I do not know of any ore or minerals upon these lands. I consider it an advantage to these lands that they lie near to Catawissa, and only about three miles from Bloomsburg, and about 7 miles from Danville, and in what is called the Columbia county iron region, and that they have ready access to the Pottsville market, and that there is a bridge across the Susquehannah at Catawissa—it was built, I think, above twelve years ago. I consider it also a great advantage to the lands that they lie near the lime, because with the use of lime these lands can be soon made good; and, if lime can be got handily, it can be done without much expense. I think, from my own experience in having limed such ridges, that by liming they will produce nearly as good crops as limestone land itself; and the same may be said of them, in comparison with river bottom land, though of course more care and labor is required to keep them up in that condition than is required for limestone or river bottom land. I can't say much about the timber on the land, as I never took particular notice of it. Catawissa is about one mile and a quarter distant.

To the fourth interrogatory on the part of the complainants, he answers as follows: I think in 1833, February and April, and at any time, this land was more valuable to divide into about one hundred and fifty acre farms, and cut into such farms it would sell a great deal better than all together. I should think that, in February and April, 1833, that land was worth about eight dollars an acre, perhaps more, except the cleared land, which was then very poor, and was not worth as much as the wood land then. I think the land is worth twenty dollars an acre now for farming purposes. Some part of it, the hilly part at the lower end, is not worth so much; that part runs down within about a half a mile of the river. There may be fifty, or sixty, or seventy acres of such hilly part. I think the uncleared land was worth about fifteen to eighteen dollars per acre, in January, 1839; the cleared land was worth more in 1839 than in 1833. Without regard to the buildings it was in better condition, but as I don't know exactly what its condition was then, I cannot fix its value then. I can't say that there was any difference in the value of the wood land in 1837 and 1839. The cleared part, in 1837, when Mr. Gratz sold to Mr. Frick and Hurley, was much out of order, and was not worth more than six dollars an acre.

(James Pleasants, Com'r.)

To the fifth interrogatory on the part of the complainants he answers as follows: I can state the value of lands, of similar quality, in the neighborhood; lands of the same quality, as well situated, in this neighborhood, are worth from eighteen to twenty dollars an acre. John Quick's land, Roberts' land, James Dugan's land, do not any of them lie as advantageously as the land in question, and are not quite so convenient to the lime. Henry Krum's land is about the same quality as this land, but it does not lie quite so well. I think it is also worth from eighteen to twenty dollars per acre. Catawissa, Bloomsburg, and Danville are the most convenient markets for the small produce of this land; and Pottsville for the grain.

To the sixth interrogatory on the part of the complainants he answers as follows: Wheat may be averaged at the price of one dollar a bushel at Catawissa; sometimes it is higher. Not often lower. Rye from 50 to 60 cts. Corn 50 cts. Buckwheat from 37 to 40 cts. Potatoes from 25 to 35 cts. a bushel. Hay from $8 to $14 a ton. There is generally a good market and ready sale at Catawissa for the produce of a farm.

To the seventh interrogatory on the part of the complainants he answers as follows: Lime can be delivered on the lands in question, at this time, from $7 to $8 a hundred bushels; this I know, as I am in the practice of hauling lime. I think it is not over a mile and a half from the lands to the lime kilns. You can buy lime for six cents a bushel in cash. I could make 3 and 4 trips a day. From 25 to 30 bushels a load, with 2 horses. As I said before, lime is of great benefit to this land, and can be conveniently had.

To the eighth interrogatory on the part of the complainants he answers as follows: The lands in this neighborhood are generally owned by the men who live on them and farm them; who are generally good, able, farmers. I don't know of any lands for sale in that neighborhood. I own a small tract myself, within three-quarters of a mile of Catawissa.

To the ninth interrogatory on the part of the complainants he answers as follows: There are indeed difficulties in obtaining and purchasing lands in this neighborhood.

To the tenth interrogatory on the part of the complainants he answers as follows: I think the lands could be advantageously divided into three farms.

To the eleventh interrogatory on the part of the complainants he answers as follows: I don't know that the sale by Simon Gratz was public. I don't know that there was any advertisement of the sale.

To the twelfth interrogatory on the part of the complainants he answers as follows: I don't know of any other matter or thing material to the complainants.

To the first cross interrogatory on the part of the respondents he answers as follows: In 1833, I lived in Catawissa. I followed pot-

ting and farming some. I was then, and am now, an owner of land in the neighborhood of Catawissa. I did not own much then. Now I own about sixty acres. I never was a tenant on any land belonging to or claimed by Simon Gratz, in Columbia county, or elsewhere.

To the second cross interrogatory on the part of the respondents he answers as follows: From 1833, to this time, my occupation has generally been farming.

To the third cross interrogatory on the part of the respondents he answers as follows: There is a difference in the value of farms in the neighborhood of Catawissa. Some of the ridge lands are greatly inferior to the lands in question. While the lands in question are inferior in value to the river bottoms and the lime stone farms. I consider a bushel of grain of any kind, raised on ridge farms of the kind and quality of the lands in question, worth some cents a bushel more than the same kinds of grain raised on the river bottoms. I should think the difference to be from 6 to 8 cents on a bushel of wheat; there is not so great a difference between the ridge land and the lime stone land; still there is a difference in favor of the ridge land; the grains are fuller, and make more flour; the crops on such ridge land are not so liable to mildew.

To the fourth cross interrogatory on the part of the respondents he answers as follows: No public improvements have been made in the neighborhood of Catawissa since 1833; the Catawissa railroad has been attempted, but it is unfinished.

To the fifth cross interrogatory on the part of the respondents he answers as follows: I can't say when the Tide-water canal from Columbia to Havre de Grace was finished. I never was on it; but from what is said, it opens a new outlet for the produce of the Susquehannah country market.

To the sixth cross interrogatory on the part of the respondents he answers as follows: The roads from the lime kilns to the lands in question are good, but hilly. They have made a new road. In 1833 and 1836 the roads were as good as they are now, except that the location of one of them is changed, at one place, so as to avoid a sharp rise.

To the seventh cross interrogatory on the part of the respondents he answers as follows: As near as I can tell, at the time of the sale to Frick and Hurley, the fences on the lands in question were in a bad situation, and the improvements were poor too, and the land in a poor state of cultivation. Now, the fences are pretty good, as far as I can see as I pass along; the buildings appear pretty good, and the cultivation appears pretty good.

To the eighth cross interrogatory on the part of the respondents he answers as follows: I would divide the tract into nearly three equal parts, having regard to springs of water. I cannot say, without being on the ground for the purpose, what part of the improvements the respective divisions would comprise.

To the ninth cross interrogatory on the part of the respondents he an-

swers as follows: This cross interrogatory I have already fully answered in my answer to complainants' fifth interrogatory, and I refer to my answer to that interrogatory.

To the tenth cross interrogatory on the part of the respondents he answers as follows: As far as I can recollect, there was difficulty in obtaining and purchasing lands in that neighborhood in 1833, and also at the time of the sale to Frick and Hurley.

To the eleventh cross interrogatory on the part of the respondents he answers as follows: I did not know at any time, and do not know of any minerals or ore on the lands in question.

To the twelfth cross interrogatory on the part of the respondents he answers as follows: I do not know of any other matter or thing material to the respondents.

PHILIP LEESHOLT.
JAS. PLEASANTS, *Com'r.*

Henry Krum, of the township of Montorn, in the county of Columbia, and State of Pennsylvania, farmer, aged sixty years, or thereabouts, being produced on the twenty-seventh day of January, 1844, sworn and examined, on behalf of the complainants, he answers as follows: To the first interrogatory on the part of the complainants he answers as follows: I do not know any of the parties, complainants or respondents.

To the second interrogatory on the part of the complainants he answers as follows: I know the value of lands about Catawissa. I came to know their value by farming thirty-three or four years, a tract of land on the ridge, adjoining the lands owned by Mr. Frick and Hurley. I am a farmer now, and have been thirty-four years. I live on a farm adjoining these lands. I have lived there ever since 1809. I have 189 acres there.

To the third interrogatory on the part of the complainants he answers as follows: I know all the lands inquired of in this interrogatory, though I don't know how many tracts there are. I know most of the lines and corners. I have been over the lands many a time; there are now about one hundred, may be one hundred and twenty-five acres cleared now. I think there was about seventy-five acres cleared when Frick and Hurley got it. All the rest was then in woods. I think if all the land was cleared, all of it but about sixty acres would make good plough land; it could be well ploughed. May be there is not sixty acres that could not be well farmed; that part of it is a hollow that joins my land; the public road from Catawissa to the valley road passes through the land. It is about one mile from Catawissa. It lays on a hill called the River hill, between my farm and Catawissa; my farm is two miles from Catawissa. I don't know of any minerals on it. I have found bog ore on it. I had it rented once, just before Hurley and Frick bought it, and in ploughing found bog ore on it. The land has the advantage of good springs on it, so that it might be divided into two or three good farms, and it lies a little [over] two miles from a lime-kiln, where Mr. Hurley gets his lime to put on the land; the timber on it is

just common; in one hollow there is fine big white oak timber—a good deal of it; in the other hollow there is not much; there is some pine on it; a storm blew a good bit of the large pine down; there is not much large pine; you can count building pine. I think there is pine and oak enough of the right size on it—excluding the big white oak in the hollow—to build all the buildings that would be required on three farms, the barns to be about sixty feet by forty feet.

To the fourth interrogatory on the part of the complainants he answers as follows: This land was worth about twelve dollars and a half an acre, in February and April, 1833. I bought adjoining it, on the northwest side about that time, for eleven dollars and a half an acre. It is worth now, all round, about twenty dollars per acre; some of it is worth thirty-five dollars an acre, and that part is enclosed; taking the rates at which land sold in January, 1839, it was worth more then than it is now, or was worth in 1833; it might then have been worth $22 per acre, but I don't fix it certain at that; I think it was worth twenty dollars when Frick and Hurley bought.

To the fifth interrogatory on the part of the complainants he answers as follows: Philip Heinbach's farm, about 160 or 70 acres, on the same ridge as this land in question, but not so good, was sold at private sale this fall, for seventeen or eighteen dollars per acre; it was first offered at public sale, and $ eighteen per acre was bid for it; but they were not willing to take less than $25, but afterwards sold it to a man from Berks county, as stated. Nearly 100 acres of it are cleared and farmed down poor; the buildings were log, pretty good. I think $18 per acre for it was low. I think that a low price for any land as good as the land Frick and Hurley bought. Catawissa is the nearest market to which the produce can be conveniently taken from these farms. Heinbach's have 3 miles to go to Catawissa and about six or seven miles to Danville. I sell about two hundred bushels of wheat and about 100 of rye yearly.

To the sixth interrogatory on the part of the complainants he answers as follows: The while past there is very little difference between the price of farm productions at Catawissa and Philadelphia; the prices vary at both; it is certain that Philadelphia prices regulate Catawissa prices. Catawissa is a middling good market, and I always find ready sale at Catawissa for what I raise, and get as much, and sometimes more, than I could get at Danville or Bloomsburg.

To the seventh interrogatory on the part of the complainants he answers as follows: Lime can be delivered, on the land in question, for about eleven dollars and a half a hundred bushels; the kilns are good two miles off; the lime is of great benefit to this land; it makes it more productive. I farmed my own without liming till they would not raise good grain any more, and since I got to liming, they produce as good and better crops than they did produce when they were new. The lands in question are good farm land, except about sixty acres; they are a better soil for wheat than my own land.

(James Pleasants, Commissioner.)

To the eighth interrogatory on the part of the complainants he answers as follows: I don't know of any lands about the neighborhood of the lands in question, but what the owners live on, except two small lots; they are all owned by able farmers, and I don't know of any lands for sale about there.

To the ninth interrogatory on the part of the complainants he answers as follows: It is a hard job to buy or obtain lands in that neighborhood; but there is one now for sale; none comes into market, only when men owning them die.

To the tenth interrogatory on the part of the complainants he answers as follows: As I said before, these tracts of land could be divided into three farms; each one to have a spring of water that would suit for building a house at; but there are other springs of water on them.

To the eleventh interrogatory on the part of the complainants he answers as follows: I don't know whether the sale by Gratz to Frick and Hurley was public or private; I only heard that it was sold by Gratz to Hurley; I don't know whether it was advertised or not.

To the twelfth interrogatory on the part of the complainants he answers as follows: I don't know any thing further material to the complainants.

To the first cross interrogatory on the part of the respondents he answers as follows: In 1833 I lived where I now live, on the farm adjoining the lands in question; I was then, and am now, the owner of the farm I live on; I farmed one summer the land Gratz sold to Frick and Hurley, the lands in question; it was the year before Hurley took possession. I can't name the year; I leased from Middleswarth; the bargain was, if he sold, I was to leave it the then next spring, and if he did not sell, I was then to have it four years; we had a written bargain; I left it because it was sold.

To the second cross interrogatory on the part of the respondents he answers as follows: I have been a farmer from 1833 to this time.

To the third cross interrogatory on the part of the respondents he answers as follows: There is a great difference in the value of farms in the neighborhood of Catawissa, and their yield depends upon the quality of the lands and the kind of farming; the river bottoms and the limestone lands are the best for grain; these lands in question would come in as the next best; I would put the river bottoms at from fifty to sixty dollars an acre, and the limestone lands between thirty-five and forty dollars an acre.

To the fourth cross interrogatory on the part of the respondents he answers as follows: I know of no public improvement made near Catawissa since 1833; a railroad was begun there, but I don't know if ever it will be finished; it was given up; several furnaces have been erected in the county since that time.

To the fifth cross interrogatory on the part of the respondents he answers as follows: I don't know any thing about the Tide-water canal.

(James Pleasants, Commissioner.)

To the sixth cross interrogatory on the part of the respondents he answers as follows: The roads from the lime kilns to the three tracts of land in question are good, after they get settled in the spring of the year; they are up hill from the kilns to the farm; they were about the same in 1833 and 1836 as they are now.

To the seventh cross interrogatory on the part of the respondents he answers as follows: When Frick and Hurley bought these lands the fences were so poor that they could not well be worse; they are good now; when I had it under Middleswarth I made some fence on it good, about 400 rods, and got $1 a hundred for making the rails, and I had to lay them up and haul them, and I was paid for making the stakes besides; there were no buildings when Frick and Hurley bought but two poor houses, and the stable was in a manner nothing; the land was then in a poor state of cultivation, but I raised good grain on the part I farmed the summer I had it; but I farmed the best part of it, besides that I cleared that summer two acres, and was to have two crops for clearing, and I got a first rate crop of wheat and of rye; it is now in a middling good state of cultivation since they limed it; the house and barn and other buildings on it now are good.

To the eighth cross interrogatory on the part of the respondents he answers as follows: The division of the lands would be so that each part should have a convenient spring of water and a fair proportion of woodland; I dont know whether the parts would be exactly equal in size, but each part would be a good size; the improvements would fall into the upper division. I mean the house and barn and the old farm land; but Frick and Hurley have been clearing in the part which would be comprised in the middle division; Hurley talks of building on the middle division.

To the ninth cross interrogatory on the part of the respondents he answers as follows: I have answered this cross interrogatory in my answer to the complainants' fifth interrogatory.

To the tenth cross interrogatory on the part of the respondents he answers as follows: There was not much land for sale in the neighborhood of the lands in question in 1833, at least I did not know of any; nor was there any for sale that I know of when Frick and Hurley bought.

To the eleventh cross interrogatory on the part of the respondents he answers as follows: I have said all I can say as to ore and minerals in my answers to the complainants' third interrogatory.

To the twelfth cross interrogatory on the part of the respondents he answers as follows: I know of no other matter or thing material to the respondents.

[Name illegible.]

JAS. PLEASANTS, *Com'r.*

And now, February 5th, A. D. 1844, a jury being called, come, to wit: Daniel K. Miller, N. Sayre Heysham, George Swartz, George Baker, Peter Keeler, Abraham Ritter, Anthony H. Morris, John

Kerlin, George T. Lehman, William Young, James McDonough, and David Weatherly, who are respectively sworn or affirmed, and upon their respective oaths and affirmations do say: "That the value of the lands in question in Union county, in 1833, was $7\frac{15}{100}$ per acre, and in 1839 $7\frac{15}{100}$ per acre, on the usual terms of sale; and that the value of the lands in question in Columbia county, in 1833, was $7\frac{30}{100}$ per acre, and in 1839 $7\frac{30}{100}$ per acre, at cash prices."

Whereupon, the said complainants, by his attorneys aforesaid, say, that the court ought not to render judgment of and upon the said verdict, because the same is insufficient and erroneous, and pray that the verdict aforesaid may be quashed, and that the issue aforesaid may be tried anew by other jurors to be afresh empannelled; because

1st. The court erred in charging the jury, that "if you believe the evidence, that it was generally known in the neighborhood of the lands, that they were for sale, and at the prices mentioned, or that it was not customary to advertise in newspapers, that they were sold in the usual course of business, then I should say the sale was public, or unless made in undue haste."

2nd. Because the court charged the jury, "that the paper title was in due form, and if the purchasers, without notice of any fraud, paid their money, they will be protected; there is no evidence of actual notice, and the purchasers swear they had now but paid their money on the strength of the general warranty of Mr. Gratz, which is not in itself notice of a defect of title," (although the bonds of indemnity were expressly against the claims of the Cohen family.)

3rd. Because the court erred in charging the jury, "that the lands in Union county were all sold on the usual terms as to payment; your duty will, therefore, be merely to inquire what was their value on those terms in 1833; the lands in Columbia county were sold for cash; it will be proper, therefore, for you to inquire whether they were sold for their actual cost value, and if not, what was their actual value; and in either case, when you fix a value different from that at which they were sold, to state whether it was a cash value, or if not, on what terms."

4th. Because the court erred in charging the jury, "but if you are to ascertain the actual bona fide value of the lands at the periods mentioned, in the hands of an owner with an undisputed title, without regard to actual sales, if you think from the evidence they were sold under their value, but not giving an extravagant, or as it has been termed, a big price, but the highest price the lands would bring at a fair sale to a bona fide purchaser, with the usual notice, but not exceeding their actual value," (the phrase big price having been used by Mr. Low, one of the witnesses, to designate the value of the lands.)

5th. Because the court erred in charging, that Simon Gratz was a trustee under the deed of 1833 of the lands mentioned in said deed.

6th. Because the court erred in charging, that Simon Gratz was the owner of one-half of one-fourth of the Union county lands named in the deed from Leah Phillips to him in 1833.

7th. Because the court erred in rejecting the following evidence offered by the complainants, viz: 1, the docket entries in the cause; 2, the bill filed; 3, the answers of Joseph Gratz and Jacob Gratz; 4, the answers of Isaac Prince and others, executors of Simon Gratz.

8th. Because the court refused to charge, as requested by complainants, on the following points: 1, the jury should fix upon such a value as the owner ought to be compelled to take, when he has been deprived of his estate by fraud or force; 2, the fact of an indemnifying bond or general warranty having been uniformly taken is of great importance, either in affecting the credibility of witnesses, and also as affecting the sales; 3, the deed of April 3d, 1833, from Leah Phillips to Simon Gratz, disclosed prima facie evidence of a lumping illegal sale by an executrix, and was *a* sufficient to put purchasers on their guard, and, consequently, as important as affecting the sales; 4, that although no increased value is to be given in consequence of any alleged matters connected with the transfer of the title, as damages for the making of such transfers, yet such allegations, if proved and believed by the jury, are to be considered by them as evidence that the prices for which the lands were sold were not the actual value.

9th. Because the jury did not give the proper value of the lands in controversy.

10th. Because the verdict was against the right of evidence.

11th. Because the court erred in admitting George A. Frick as a witness.

12th. Because there was no issue formed and tried, but the case was submitted to the jury in violation of the practice and usage of the common law.

Afterwards, to wit, on the fifteenth day of April, A. D. 1847, motion for new trial refused.

Afterwards, to wit, on the fourteenth day of October, A. D. 1847, the court make and pronounce a decree in the words following, to wit:

SAMUEL M. COHEN AND ELEAZER L. COHEN,
vs.
SIMON GRATZ'S executors and others.

In circuit court, U. S. In equity. April sessions, 1839. No. 1.

And now, to wit, this 14th day of October, A. D. 1847, the above cause came on for further hearing at this term, and was argued by counsel; and therefore, upon consideration, it is ordered, adjudged, and decreed by the court, as follows, viz., that the said Louisa Gratz, Edward Gratz, David Gratz, and Isaac Prince, executors of the last will and testament of Simon Gratz, deceased, do account and pay to Samuel M. Cohen, Eleazer L. Cohen, complainants, and to Sarah M. Cohen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, Joseph S. Cohen, and Joseph S. Cohen, administrator of Rebecca M. Cohen, deceased, children of Bilah Cohen, the one moiety or half part of the value of all the tracts of land, and moneys, and other

2061.

estate of Joseph Simon, conveyed to Simon Gratz by the deed of third April, 1833, so far as the same lands, or any portion of them, have been sold, aliened, or conveyed by Simon Gratz in his lifetime, or by his said executors since his death, and that said executors convey, by proper and sufficient assurances in law, the one moiety of the interest of Joseph Simon in all tracts of land in said deed mentioned or intended to be conveyed, which have not been so sold or conveyed by Simon Gratz, in his lifetime, or by his executors, and the title to which has not been lost by the laches or neglect of said Simon Gratz, or his executors, unto the complainants in this case, in trust for themselves and the other children of Bilah Cohen, deceased, as to such other or all of said children in trust for all, as they may elect.

And it is further ordered and decreed, that it be referred to James Hepburn, esq., one of the masters of this court, to take and state an account of all the lands sold by Simon Gratz, in his lifetime, or by his executors; also of all moneys received by him or them for lands previously sold by the executors of Joseph Simon, and received by virtue of said deed of third of April, 1833. In stating this account, the master will charge the accountant with the value of said lands so far as sold or disposed of, according to the valuation put on them by the jury in the issue tried between the parties, with interest, when not valued at cash value, as if one third had been received on 3d April, 1833, one third on 3d April, 1834, and one third on 3d April, 1835; and when valued at cash value by the jury, interest to be calculated from 3d April, 1833. Of the other lands sold by the said Simon Gratz, and not valued by said jury, the master will charge the accountants with their value as ascertained by the sum or consideration paid or to be paid for them by the purchasers from said Gratz, with interest from the time of the consideration was received, or should have been received for the same. The said master will also inquire and report to the court what lands, conveyed by said deed of third April, 1833, to Simon Gratz, have not been sold by him or his executors or heirs, and whether the title to the same has been lost by the laches or neglect of said Simon Gratz or his executors.

And for the better discovery of the matters aforesaid, the parties are to produce before the said master (upon oath, if required) all books, papers, and writings, in their custody or power, relating thereto, as the said master shall direct, and may be examined on interrogatories or otherwise, as said master shall direct.

And all further directions are reserved until the coming in of said report.

And it is further ordered and decreed, that an injunction be issued against said executors of Simon Gratz, and Joseph and Jacob Gratz, surviving administrators of Michael Gratz, enjoining them against setting up the agreement between said Simon Gratz and Leah Phillips, dated February 13, 1833, in said bill of complaint described, in any suits or controversies between said parties

And it is further ordered and decreed, that said suit be dismissed without costs as to John Moss, Lyon J. Levy, Isaac Phillips, and Isaac B. Phillips.

By the court.

R. C. GRIER,
J. K. KANE.

Afterwards, to wit, on the eighteenth day of December, A. D. 1847, the report of James Hepburn, esq., master, is filed as follows, to wit:

In the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, of October sessions, 1847.

SAMUEL M. COHEN and Eleazer L. Cohen
vs.
SIMON GRATZ et al.

No. 1. April sessions, 1839. In equity.

To the honorable the judges of the circuit court of the United States, for the eastern district of Pennsylvania, in equity:

The undersigned, the master, to whom the above case was referred, as will appear by the order embraced in the decree of this honorable court hereto annexed, respectfully reports, that the ninth day of November, 1847, was appointed by the undersigned for hearing the parties and their counsel on the matter referred to him, and on that day, and at the several adjournments of the case, he was attended by Benjamin Tilghman, esq'r, for the complainants, and W. B. Reed, esq'r, for the defendants; S. S. Cohen and Eleazer Cohen, esq'rs, two of the complainants, and E. Gratz and Isaac Prince, two of the defendants, were also in attendance at several of the meetings.

The instructions to the undersigned contained in the decree above referred to are as follows:

"And it is further ordered and decreed, that it be referred to James Hepburn, esq'r, one of the masters of this court, to take and state an account of all the lands sold by Simon Gratz, in his lifetime, or by his executors; also of all moneys received by him or them for lands previously sold by the executors of Joseph Simon, and received by virtue of said deed of 3d April, 1833. In stating this account, the master shall charge the accountant with the value of said lands, so far as sold or disposed of, according to the valuation put on them by the jury in the issue tried between the parties, with the interest, when not valued at cash value, as if one-third had been received on the 3d April, 1833, one-third 3d April, 1834, and one-third 3d April, 1835; and when valued at cash value by the jury, interest to be calculated from 3d April, 1833. Of the other lands sold by S. Gratz, and not valued by the jury, the master will charge the accountant with their value as ascertained by the sum or consideration paid or to be paid for them by the purchaser from said Gratz, with interest from the time the consideration was received, or should have been received, for the same. The said master will also inquire and report to the court what lands conveyed by said

deed of 3d April, 1833, to Simon Gratz have not been sold by him or his executors or heirs, and whether the title to the same has been lost by the laches or neglect of said Simon Gratz or his executors."

The foregoing instructions proved the subject of four distinct inquiries in the hearing of the case before the undersigned, which, for the sake of accuracy, he begs leave to repeat at the risk of repetition.

1st. What lands conveyed to Simon Gratz by Leah Philips, executrix, &c., of Joseph Simon, by her deed of 3d April, 1833, have been sold by him or his executors, &c., and valued by the jury?

And as regards the lands so sold: 1st. Which of them have been valued at cash value? 2nd. Which of them have not been so valued?

The accountant to be charged on the former with the valuation and interest thereon from 3d April, 1833; on the latter, with interest on one-third of the valuation from 3d April, 1833, on one-third from 3d April, 1834, and on one-third from 3d April, 1835.

2nd. What lands conveyed as above to S. Gratz by the deed of 3d April, 1833, have been sold by him and not valued by the jury?

As regards these, the accountant is to be charged the amount or consideration paid or to be paid for them, with interest from the time it was received, or should have been received, by him.

3d. What lands conveyed as above to S. Gratz have not been sold by him, his executors, or heirs, and whether the title to the same has been lost by the laches or neglect of the said Simon or his executors?

4th. What moneys have been received by Simon Gratz or his executors for lands sold by the executors of Joseph Simons, and received by him, or them, by virtue of the said deed of 3d April, 1833?

The inquiries are all based upon the deed of 3d April, 1833, and the action of the parties in connexion therewith. By this deed Leah Philips, executrix of Joseph Simon, conveyed to Simon Gratz seventeen tracts of land—of these, eight are described as lying in Union county, two in Juniata county, three in Columbia county, and four in Bedford county.

The whole of these lands have been sold, either by the executors of Joseph Simon before the execution of the deed of 3d April, 1833, or since by Simon Gratz, except the tract in the name of Samuel Laird, which defendants allege could never be found.

The lands mentioned in the deed are thus described: 1st. Those in Union county:

Warrantee Name.	*No. of acres.*	*Quantity conveyed.*
William Cox,	293,	a moiety.
Thomas Freet,	$404\frac{3}{10}$,	a fourth.
James Furguson,	$364\frac{7}{10}$,	a fourth.
James Hunt,	$195\frac{7}{10}$,	a moiety.
Philip Palmer,	200,	a moiety.
Sam'l Laird,	$143\frac{7}{10}$,	a moiety.
William Foster,	192 83 perch,	a fourth.
Charles Dunnigon,	$236\frac{3}{10}$,	a moiety.

2nd. Those in Juniata county:

Daniel Laurence,	$165\frac{7}{10}$,	a moiety.
James Wilkes,	$314\frac{3}{10}$,	a moiety.

3d. Those in Columbia county:

Michael Gratz,	177.
Levy Andrew Levy,	146.
Levy Andrew Levy,	200.

4th. Those in Bedford county:

James Daily,	269 32,	a fourth.
Angus McPherson,	313 120,	a fourth.
Abram Douglass,	316,	a fourth.
Thomas Hallowell,	283 120,	a fourth.

The above lands, described as lying in Bedford county, were sold by Simon Gratz, and not valued by the jury. These lands, therefore, come within the second inquiry as stated above, and the accountant is to be charged therewith at the price at which he sold them, with interest from the time the money was received, or should have been received, by him.

It appears that Simon Gratz sold them to S. Bach for $359 11, and received the purchase money October 10th, 1833. Of this sum he is liable to account to the complainants under the decree of the court for the one-fourth, or $89 77, with interest from 10th October, 1833, and is charged accordingly in the accompanying account.

The Columbia county lands were also sold by Simon Gratz, and were valued by the jury at $7 30 per acre cash, amounting in the whole to $3,817 90, of which sum the complainants are entitled, under the decree of the court, to the one-half, with interest from the 3d April, 1833, and come within one of the branches of the first inquiry as stated above; and the accountant is charged therewith accordingly.

As regards the above lands in Bedford and Columbia counties, there was no question or difficulty raised before the master, as to their coming within the decree of the court as stated above. Neither was any question raised with regard to the tracts in Union county, in the names of William Cox, Thomas Freet, James Hunt, Philip Palmer, and Charles Dunigan, containing in the whole $1,329\frac{3}{10}$ acres, so far as that the sale of the same was made by Simon Gratz, and that they come within that clause of the decree of the court which directs the master to charge the accountant with the valuation of the jury, and interest on one-third thereof from 3d April, 1833; one-third from 3d April, 1834; and one-third from 3d April, 1835, the same not having been valued at cash value. Of four of the foregoing tracts, containing 925 acres, the complainants have right to one-fourth, and of the other $404\frac{3}{10}$ acres, to $\frac{1}{4}$th, and the accountant is charged with these proportions of the valuation in the annexed account. The plaintiff, however, claimed to be allowed for the quantity of acres actually sold by S. Gratz, at the rate of valuation placed upon Union county lands, by the jury; and it

would seem that the quantity so sold, in three of the tracts named, viz., those in the names of Cox, Hunt, and Palmer, show a surplus of sixty-eight acres over the quantity called for in the warrant.

It appears that the deed of 3d April, 1833, was before the jury with the quantity of acres called for by that instrument, and it is deemed most probable that their valuation was based upon the quantity thus called for, including the usual allowance. It does not appear that there was any other evidence of quantity before them, and it is usual on sales of land by the quantity, as called for by the warrant, without any stipulation to the contrary in the contract, that the purchaser has the benefit of the surplus. The undersigned is of the opinion, that the same rule should be applied to the valuation of the jury. And this rule, as regards sales, is peculiarly true of rough lands in remote situations, of which description are the lands in controversy. If, therefore, the jury intended strict measure, it may be presumed they would have so said, and, in the absence of the declaration of any such intention, the valuation is taken to apply to the quantity as stated in the deed. The undersigned is therefore of opinion, that the surplus should not be charged to the accountant.

The foregoing disposes of all the lands conveyed in the deed of 3d April, 1833, except the tracts in the names of Daniel Lawrence and Joseph Wilkes, Samuel Laird, James Furguson, and William Foster, with regard to which several questions arose.

The complainants claim to be allowed as for lands sold by Simon Gratz, and valued by the jury as Union county lands, for the tracts in the names of Daniel Lawrence and Joseph Wilkes. It was admitted that both tracts lie in Mifflin county. There was no dispute as to the sale by S. Gratz; but it was insisted by the complainants that the exception growing out of the fact that the lands lie in Mifflin county was merely verbal; and it was insisted that the lands were in dispute before the chancellor, that they were passed by the deed of 3d April, 1833, to S. Gratz, and formed in part the subject of the decree of the court. That the case had been referred to a previous master, who had ascertained the value of these lands without the objection of their lying in Mifflin county, and this part of his report had not been excepted to. That under the feigned issue directed by the court, the jury had ascertained their value. That the lands having been actually sold by S. Gratz, and the proceeds thereof now held by his representatives, they were subject to the same equity as the other lands. That these lands, with the lands admitted to be in Union county, form one body and lie on Jack's creek, and that the whole are called "Union county lands;" and referred to the correspondence between S. Gratz and Ner Middleswarth to show that the whole tracts in Union county were comprehended in the dispute, and that these were included. He referred also to Mr. Hopkinson's report, page 4, to show that both tracts were valued by him, and observed in conclusion, that the objection was now made for the first time.

The defendants on the other hand contended that the jury had found

the value of the lands in Union county, and that the finding could not be extended by construction to lands elsewhere. That the master could not go behind the verdict, which was clear and spoke for itself. That the proceeding before the previous master had nothing to do with the question now under consideration, and that the order of court left no discretion to the master. That the court had determined the equity to which the complainant was entitled, and that the master was bound by the verdict, when the case came within it, and this it was insisted was not the case with regard to the lands the subject of this exception.

It appears to the master that the question raised in reference to the two tracts above named is one growing out of the different views taken by the respective parties of the opinion of the court delivered in the case, and the decree based upon it. After examining the paper book (which was in evidence) in relation to the various tracts of land in controversy, the two tracts, to which this part of the description has reference, is found described in the deed of 3d April, 1833, as follows:

"One undivided moiety or half part of a certain tract of land in Juniata county, containing 165 acres and $\frac{4}{10}$ths of an acre and allowance, surveyed in the name of Daniel Laurence; also, one undivided moiety of a tract of land in Juniata county, containing 314 acres and $\frac{4}{10}$ of an acre and allowance, surveyed in the name of James Wilkes." See paper, book 103; and by reference to the bill originally filed in this case, it will be seen that the deed above mentioned was referred therein, and a copy thereof, marked L, annexed thereto. On the 10th November, "it was ordered by the court, that an issue be formed and tried at law, before a jury, to ascertain the value of the lands belonging to the estate of Joseph Simon, deceased, which purported to be conveyed by Leah Phillips to Simon Gratz, by her deed of 3d of April, 1833. Such value to be ascertained—1st, at the date of the deeds in 1833; 2d, at the time of the filing of the original bill in this case, but without reference on this head to any increased value occasioned by improvements put upon the lands between the said two dates." February 5, 1844, a jury was sworn in the issue, who, on the 17th February, found as follows:

"And now, the jurors aforesaid, on their oaths and affirmations aforesaid, respectively do say, that the value of the lands in question in Union county, in 1833 was $7 15 per acre, and in 1839 $7 15 per acre, on the usual terms of sale; and that the value of the lands in question in Columbia in 1833 was $7 30 per acre, and in 1839 $7 30 at cash prices."

The order of court directing the issue was, to ascertain the value of the lands of Joseph Simon, deceased, which purported to be conveyed to Simon Gratz by the deed of 3d April, 1833. The order, therefore, comprehended the whole of the tracts conveyed by the deed wheresoever they lay. What testimony may have been submitted to the jury, and in relation to what lands, is not now a subject of inquiry. That the deed was before them is obvious from its being the basis of the issue directed by the court. This deed calls for land in four different coun-

ties, and the whole were referred to them for valuation. Why, therefore, the valuation was confined to lands in Union and Columbia counties, to the exclusion of those described in the deed as lying in Juniata and Bedford counties, is not readily conjectured, nor is it a subject of inquiry. The only question is, whether the verdict fixing a value on lands in Union county can be taken to embrace lands not within that county. The contiguity of the two tracts now under consideration to other lands in Union county, does not bring them within the description of the verdict. If the verdict had described the lands as lying on Jack's creek, (one of the arguments of the complainants,) it might have comprehended these two tracts. But its language is definite; the words used are, "the value of the lands in question in Union county," which can mean nothing more nor less, as understood by the master, than "the value of so many of the lands in question as lie in Union county, or within the limits of Union county." All other lands, therefore, not within these limits, are by the terms of the verdict excluded.

The master is not able to gather any thing from the opinion of the court, which he has very carefully considered, to authorize him to go beyond the verdict as it is recorded. And he deems certain portions of his instructions clear the other way. He refers to those which discriminate between lands sold by Simon Gratz and valued by the jury, and lands sold by the same person and not valued by the jury. With regard to the former, he is directed to charge the accountant at one rate, and with regard to the latter at another; thus showing a clear intention on the part of the court to have the discrimination made as to the rate, as the several tracts of land, the subject of the account, should be brought within the one description or the other.

Besides, as the valuation found by the jury was directed by the court to be allowed for the lands within the verdict, and this is greater in amount than the actual sales; and as in the view taken of the case by the court, Simon Gratz had improperly forced himself into a trust to which he had no just pretensions, this rate was allowed, as it would seem, as a species of penalty for his improper interference; and regarding the decree of the court in this light, the master considers himself bound, by the strict letter of the verdict, and that he has no discretion to put a construction upon it other than the plain import of its words.

He, therefore, reports these tracts as "lands sold by Simon Gratz, and not valued by the jury," and for which his estate is chargeable with the sum paid for them by the purchaser, with interest from the time the consideration should have been received, and has charged the accountant accordingly in the annexed account. As the question raised, however, in regard to these tracts, are mainly dependent upon a just construction of the view of the case as it is expressed by the court, the master will annex a calculation in the alternative; and if he shall have erred in the view he has taken, the latter calculation can be adopted, and will afford a ready means of correcting his error.

The complainants also claim the James Furguson tract as being within the valuation of the jury; and, therefore, that the accountant be

charged at the rate of $7\frac{15}{100}$ per acre for the same, with interest, as directed above.

And he urged, that the compromise shown to have been made respecting this tract should not govern the valuation, so as to exclude it from the value established by the jury. That the court had repudiated the contracts and sales of S. Gratz, and of course his compromise. It was contended that S. Gratz had sold it, having made a deed for it, and his letters to Ner Middleswarth, of 10th of April, 1834, and 13th of March, 1834, were referred to.

The facts having a bearing upon the question relating to this tract appear to be as follows:

The executors of Joseph Simon had, at an early day, contracted for the sale of it to Peter Fees, who paid to them at different times, between 1809 and 1825, a large portion of the purchase money. There was some dispute respecting the lands, and it would seem that Fees claimed to have made a tender to Mr. Phillips, one of J. Simons' executors, in Lancaster, of the balance of the purchase money, demanding the title. No deed was executed, however; and thus things continued till the tract was conveyed to S. Gratz by the deed of 3d April, 1833. The latter, it would further seem, in view of the difficulties of the case, proposed to take $800 in full for the balance due, and that he ultimately did take $700, and made a deed for the tract to the executors of Fees, in trust for his heirs. These facts are disclosed in letters that passed on the subject between Simon Gratz and Ner Middleswarth and Jacob Fees, the executors of Peter Fees, of 20th of March, 1834; 28th March, 1834; 2d June, 1834; 25th June, 1834; and a letter from Ner Middleswarth to Isaac Prince, of October 30, 1837; which was admitted in evidence before the master.

The complainants however contended, that S. Gratz was an intruder; never was their agent in any shape; and that he persisted in selling the land contrary to their inclination, protest and opposition, in various ways.

The master is of opinion, that this tract does not come within the class contended for by the complainants. The tract was sold by the executors of Jos. Simon, long before the conveyance to S. Gratz, who did no more than carry the contract of the former into execution, upon receiving the balance of the purchase money, or what he deemed an equivalent for the balance due, in view of the difficulties that had arisen with regard to the title. In making the conveyance upon payment or tender of the purchase money, he did no more than the law would have compelled him to do. He took the title with knowledge of the trust, and was bound, by the contracts of his predecessors, under whom he claimed. If the tract had not been conveyed to S. Gratz by the deed of 1833, and had remained in the representatives of J. Simon, or had passed into any other hands, the purchaser being in possession of the land, as was the case, would have operated as noted, and the holder of the title, whosoever he might be, would have been compelled to convey under like circumstances. The sale was not made by S. Gratz, but was made by the executors of Simons'. The legal title only remained in them, but subject to the demand of the purchaser on payment of the

balance of the purchase money. S. Gratz, after this title became vested in him, could not alter the contract, impose new terms, or do any other act affecting it, without the consent of the other contracting party.

For these reasons, and a great many others that might be urged, the master is of opinion that this tract comes within that branch of his instructions which requires him "to report an account of all moneys received by S. Gratz, for lands previously sold by the executors of Joseph Simon, and received by him by virtue of the deed of 3d April, 1833." And he has charged him accordingly with so much of the sum received as the plaintiffs are entitled to, with interest from the time of payment, 1st December, 1834.

The same grounds and arguments were insisted upon by the complainants with regard to the William Foster tract. This tract was sold by the executors of Joseph Simon, and nothing has been shown to the master exhibiting any evidence that S. Gratz interfered with it in any way, except to receive the balance of the purchase money due upon it, with which he is charged accordingly, as in the Furguson tract last mentioned. A large portion of the purchase money of both the foregoing tracts was paid by the purchasers to the executors of J. Simons, in one case more than half, in the other a larger proportion. If S. Gratz were charged with the whole of both tracts, at the valuation of the jury, he would be compelled to pay for that over which he never had any control; and the undersigned cannot find any thing in his instructions that would authorize him in so charging the accountants.

The Samuel Laird tract, the complainants admitted, could not be found, and it was agreed that it should be withdrawn from the account before the master, and left subject to such other order as the court may make respecting it.

In obedience to his instructions the master reports, that the said tract has not been sold by Simon Gratz, his executors or heirs, and that the title to the same has not been lost by the laches or neglect of the said Simon, or his executors.

It was also admitted by the defendants that they were chargeable with the complainants' proportion of the money received from the sale of the Bedford county lands, by S. Gratz, 26th March, 1834, $61 55.

And with cash received by S. Gratz from Sam'l Breck, 10th October, 1833. Also, on account of the same lands, $89 77. And the accountants are accordingly charged therewith, with interest, from the time the respective sums were received, as above stated.

In accordance with the foregoing views and explanations, the accountants will be chargeable as follows, viz:

1st. With the lands in Union county, conveyed to Simon Gratz by the deed of 3d of April, 1833, by him sold, and valued by the jury at $7 15 per acre; with interest on ⅓ of the valuation, from 3d of April, 1833, ⅓ from 3d April, 1834, and ⅓ from 3d April, 1835:

⅓ Thomas Freel tract, 404 $\frac{3}{10}$ acres, at $7 15 per acre, is $2,890 74; complainants' interest therein ⅓, or - $361 34

⅓ William Cox tract,	293	acres	
⅓ Chas Dunegan "	236 3/10	"	925 acres.
⅓ Philip Palmer "	200	"	
⅓ James Hunt "	195 7/10	"	

925 acres, at $7 15 per acre, is $6,613 75

Complainants' interest therein ⅓, or - - - $1,653 43

$2,014 77

Interest on ⅓, or $671 59, from 3d April, 1833, to 14th Oct., 1847, 14. 6. 11. - - - $585 50
Int. on ⅓, from April 3d, 1834, 13. 6. 11. - 545 20
Int. on ⅓, from April 3d, 1835, 12. 6. 11. - 504 90

1,635 60

2d. In Columbia county—lands conveyed and sold as above, and valued by the jury at $7 30/100 per acre, cash, viz:

Michael Gratz tract, 177 acres.
Levy Andrew Levy 146 "
Levy Andrew Levy 200 "

523 acres.

523 acres, at $7 30, is $3,817 90; complainants' interest therein one-half, or - - - - $1,908 95

Interest from 3d April, 1833, to 14th October, 1847, 14. 6. 11. - - - - - - 1,664 80

3d. Lands in Mifflin county, sold as above, but not valued by the jury, with interest from the time the money was received by S. Gratz:

⅓ Daniel Laurence tract, 165 4/10.
⅓ James Wilkes " 314 2/10.

S. Gratz received for these tracts, August 24, 1836, $2,400; complainants' interest therein ⅓, or - - $600 00

Interest from 24th Aug., 1836, to 14th October, 1847, 11. 6. 20.. - - - - - - 401 00

4th. Lands in Bedford county, sold by S. Gratz, and not valued by the jury, interest chargeable as above:

⅓ James Daily tract, 269.32
⅓ A. McPherson " 313.120.
⅓ A. Douglass " 316.
⅓ Thos. Hallowell " 283.120.

S. Gratz received for sale of one half of these lands, 26th March, 1834, $246 20; complainants' interest therein ⅓, or - - - - - 61 55

Interest from 26th March, 1834, 13.6.18. - - 50 02

And the accountants are further chargeable with moneys received by S. Gratz from S. Breck, on account of Bedford lands, $359 11; complainants' interest therein ⅓, or - - - - - - 89 77

Int. from 10th October, 1833, when received, 14.0.4. 75 46

5th. Lands sold by the executors of Joseph Simon, in Union county:		
¼ of James Furguson's tract, 364 7/10 acres.		
S. Gratz received for the half of this tract, from the purchasers, by virtue of the deed of 3d April, 1833, $700; one half payable 1st July, 1834, and one half payable 1st May, 1835; complainants' interest therein one-fourth, or - - - - - -		175 00
Interest from 1st December, 1834, 12.10.13. - -		135 12
¼ of William Foster's tract, 192 acres 83 ps.		
S. Gratz received for the balance due on half of this tract, as above:		
June 12, 1833, $68 75, complainants' interest ¼, $17 18		
June 16, 1834, $40 " " " 10 00		
Interest on $17 18, from 12th June, 1833, 14.4.2. 14 75		
Int. on $10, from 16th June, 1834, 13.4. - 8 00		
		49 93
		$8,861 97

The master therefore reports, that the above sum of $8,861 97 was due on the 14th Oct., 1847, the date of the decree of the court, from the accountants to the complainants, in accordance with the said decree and order of court, as he understands them.

If, however, he has mistaken the views of the court as regards the Daniel Laurence and James Wilkes tracts, and it was the intention of the court that these tracts should be charged as Union county lands, valued by the jury at the rate of $7 15 per acre, the account will stand as follows:

Daniel Laurence tract, 168 4/10	
J. Wilkes " 314 3/10; 479 7/10 acre, at $7 15 per acre is $2,429 85; of which complainants are entitled to ½, or - - - - - -	$607 46
Interest on ⅓ from 3d April, 1833, $202 48⅓, 14.6.11.	176 49
" " ⅓ " 3d April, 1834, 202 48⅓, 13.6.11.	164 34
" " ⅓ " 3d April, 1835, 202 48⅓, 12.6.11.	152 19
Amount as per valuation of jury, - -	$1,100 48
From which deduct the sum charged for these tracts, as above, - - - - - - -	1,001 00
	$99 48

Balance to be added to the amount reported as due from the accountant to the complainants, if the master has erred, as above.

All which is respectfully submitted.

(Signed,) JAS. HEPBURN, *Master*, &c.

COHEN
vs.
GRATZ.

The complainants in the above case except to the report of James Hepburn, esq., the master appointed by the court.

1. First. In not allowing the value fixed by the jury for the tracts in the names of Daniel Laurence and James Wilkes, with interest on the same.

2. Second. In not allowing the value of the tracts of land and interest thereon in the name of James Ferguson, according to the value fixed by the jury.

3. Third. Because the said master erred in not allowing the complainants for the value of sixty-eight acres surplus over the number of acres contained in the warrants, in the name of Coxe, Hunt & Palmer, according to the valuation of the jury, with interest thereon, in conformity with the decree of the court.

4. Fourth. The said master erred in his report in reference to the tract in the name of Samuel Laird.

5. Fifth. In not allowing the value of the land as fixed by the jury in the name of William Foster, with interest thereon.

6. Sixth. Because the master erred arithmetically, in stating in his alternative account the value of the tracts in the names of Daniel Laurence and J. Wilkes, containing four hundred [and] seventy-nine acres and seven-tenths acres, at seven dollars and $\frac{15}{100}$ per acre, to be $2,429.85, instead of $3,429.85, and in not allowing the increased interest thereon.

7. Seventh. Because the said master has erred in stating the amount due to the said complainants and the other children of Mrs. Bilah Cohen.

BENJ'N TILGHMAN,
THOMAS J. BUDD,
Sol. for the "Cohens."

Afterwards, to wit, on the 24th day of January, A. D. 1848, the opinion of the court is delivered by Judge Kane, as follows:

SAMUEL M. COHEN et al.
vs.
SIMON GRATZ et al.

In the circuit court of the United States, in equity.

This cause came on to be further heard, on the master's report and the exceptions thereto, and was argued by counsel; and therefore, upon consideration thereof, the first, sixth, and seventh exceptions were sustained, and the second, third, fourth, and fifth exceptions dismissed; and it was ordered, adjudged, and decreed, as follows, viz: That the said Louisa Gratz, Edward Gratz, David Gratz, and Isaac Prince, executors of the last will and testament of Simon Gratz, deceased, do account and pay to Samuel M. Cohen, Eleazer L. Cohen, Sarah M. Co-

hen, Rachel M. Cohen, Elkalah M. Cohen, Abraham M. Cohen, Joseph S. Cohen, and Joseph S. Cohen, administrator of Rebecca M. Cohen, deceased, children of Bilah Cohen, deceased, the sum of nine thousand four hundred and fifteen dollars and twenty-nine cents, with interest thereon from October 14th, 1847, and costs; and that the said executor shall convey, by proper and sufficient assurances in law, the one moiety of the interest of Joseph Simon in all that certain tract of land designated in the deed of the third of April, 1833, from Leah Phillips to Simon Gratz by the warrantee name of Samuel Laird.

Master's costs, $100, to follow the decree. Order for payment accordingly, 29th January, 1848.

J. K. K.

[Note.—Those who desire a more specific statement of these complicated transactions can be gratified by turning to 1 Penn. Rep., 333.]

Samuel M. Cohen and Eleazer L. Cohen
vs.
Simon Gratz's executors and others.

In circuit court U. S., eastern district Pennsylvania, in equity.

Opinion of the court.

The complainants, Sam'l M. Cohen and Eleazer L. Cohen have filed this bill for a discovery against Leah Phillips, surviving executrix of Joseph Simon, deceased, and Simon Gratz, and praying also that a certain agreement and deeds executed by and between said Leah and Simon may be annulled and declared fraudulent and void, and that Simon Gratz be decreed to account, &c. John Moss, Lyon J. Levy, Isaac Phillips, Isaac B. Phillips, and Joseph and Jacob Gratz, administrators of Michael Gratz, are charged as confederates, and made co-defendants. The complainants are two of the children and heirs of Bilah Cohen, deceased, and are citizens of the State of New Jersey. The other children of said Bilah being citizens of Pennsylvania, are made co-defendants, but nothing is charged against them, their interest being common with the complainants. Since filing the bill, and before answer, Simon Gratz died; and, after putting in her answer, Leah Phillips died also; and their respective representatives have been made parties by bills of revivor. The bill contains a history of transactions commencing in the year 1769, and ending in 1833. The inherent difficulty of giving a clear narrative of such numerous and complicated facts may account for much of the obscurity which has been imputed to the bill of complaint.

In order to avoid prolixity and confusion, we shall not endeavor to give a particular statement of the facts of the case, as we believe a brief summary of them will be sufficient in order to a correct apprehension of its true merits.

Joseph Simon, by his last will, executed in 1803, appointed Levi Phillips and Leah, his wife, and Mrs. Bilah Cohen, his executors, with

full power to sell all his real estate. His three daughters, Hester, Leah, and Bilah were made residuary legatees, and, by the death of Hester, Leah and Bilah took each a moiety of the residue. The will directed the real property to be converted into money—Leah to have her share, principal and interest, absolutely; but Bilah to have only the interest during her life, and the principal to be paid to her children after her death. By the last codicil of the will, Levi Phillips was authorized "to do as he thought requisite" about paying to Bilah any portion of the principal bequeathed to her children. But it does not appear that Levi Phillips ever made any appointment under this power.

Joseph Simon died in 1804. After his death, his executors proceeded to sell and dispose of his lands, from time to time, under the powers vested in them. In a large number of these tracts of land, Michael Gratz was interested, by virtue of a declaration of trust given by Simon in his lifetime, and of claims of David Franks, (a former partner of Simon,) which had been transferred to Michael Gratz; Simon Gratz was the agent of Michael Gratz in his lifetime, and his chief acting administrator after his death.

The administrators of Michael Gratz instituted suits from time to time against the executors of Joseph Simon to obtain accounts of the lands sold by Simon in his lifetime, as also of those sold by the executors themselves after his death; and from the year 1806 to the present day the records of the courts show a continued and incessant litigation between the parties. Levi Phillips died in 1828, and Mrs. Bilah Cohen on 29th January, 1833, and thus Mrs. Leah Phillips was left as the only surviving executrix of Joseph Simon.

At this time, there remained unsold, of the lands belonging to his estate, three tracts of land in Columbia county, containing about 525 acres, in which the estate of Mich'l Gratz had no interest, and fourteen other tracts, situate in Union, Juniata, and Bedford counties, containing about 3,800 acres, in which the estate of Gratz claimed to be interested —in some one-half, in others a fourth.

This brief outline of the history of this case brings us to the year 1833, in the month of February, when the transaction took place which forms the ground of complaint in the complainant's bill.

Immediately after the death of Bilah Cohen, Mrs. Phillips being sole executrix and trustee, and being old, frail, and in necessitous circumstances, without any consultation with, or knowledge of, the children of Bilah Cohen, who were equally interested with herself; but taking as her advisers Mr. John Moss and Mr. Lyon J. Levy, (who were wholly ignorant of every thing connected with the case,) made proposals to Simon Gratz to compromise and settle the three law suits, pending between the estate of Jos. Simon and Michael Gratz, and in order to raise some means of present subsistence, proposed to "sell her interest" in her father's estate; accordingly, the following propositions were made by Simon Gratz, to which it seems Mrs. Phillips assented, and executed by delivery of the necessary deeds and vouchers, and by delivering over at the same time to Simon Gratz all the papers belonging to the estate of Joseph Simon:

"Acts to be performed by Mrs. Leah Phillips, surviving executrix of Joseph Simon, deceased:

1. To execute deed for Michael Gratz, interest in unsold lands.

2. To direct her attorney in suit (in the court of common pleas of Lancaster county, of January term, 1822, No. 163,)—

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased, vs. LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors of Joseph Simon, deceased.	Amicable action, August term, 1822; award of referees, in favor of plaintiffs, for $2,967 34; exceptions filed to report.

To bring up the case, on argument, then permit the exceptions to be overruled, and the award affirmed.

3. To settle the sum due on the sale of house and lots in Carlisle, in judgment in supreme court, which shall be submitted to the auditors to report thereon.

4. The suit, LEVI PHILLIPS, Leah Phillips, and Beliah Cohen, executors of Joseph Simon, deceased, vs. SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased.

In the court of Lancaster county, September term, 1828. No. 2.

Mrs. Phillips and her attorney to direct discontinuance of this action.

5. To transfer all her interest in the estate of Joseph Simon to Simon Gratz for the sum of ($———, blank, this to be fixed,) if the product of this shall produce a sum exceeding the amount of the above judgments, and the sum to be paid as a consideration, then the excess to be paid over to Mrs. Leah Phillips. The blank to be filled up with fifteen hundred dollars; five hundred dollars in hand, five hundred in one year, and five hundred in two years.

February 15, 1833. S. GRATZ.

Soon after this transaction, it, by chance, came to the knowledge of Joseph S. Cohen, one of the children of Bilah Cohen, who had previously acted as counsel and attorney for the executors of Simon. He immediately interfered to prevent its consummation, so far as regarded the confession of judgments in the suits on record; but Simon Gratz proceeded to make sale of the lands so transferred to him by Leah Phillips, claiming to be sole owner by virtue of the deed executed in fulfilment of this agreement.

The complainants by their bill seek to set aside this agreement and the deeds made to Simon Gratz, or if the court will not grant them that remedy, because the lands have passed into the hands of bona fide pur-

chasers from Gratz, they claim that he be decreed to account for the value of them.

This agreement, and the deeds made in pursuance of it, are alleged to be fraudulent, on two grounds:

1st. As between the parties themselves, because advantage was taken of the necessities, weakness, and ignorance of an old woman, to obtain a transfer of the whole estate confided to her charge, for a consideration wholly inadequate, upon an agreement approved by her friends, to sell no more than her own interest.

2. As against the children of Bilah Cohen, because the purchaser colluded with the executrix or trustee in making a fraudulent application of the trust property to her own use, and to pay judgment in favor of the purchaser, to the payment of which the complainants and their property were not bound to contribute.

It is much to be lamented that Mr. Simon Gratz died so soon after the filing of this bill that we have not his answer to the charges contained in it. This has been in some measure supplied by his deposition taken on this subject with a full cross examination, soon after the transaction.

But, before speaking more particularly of the facts of the case, I desire to apologize for the use of terms which may appear to contain harsh reflections on the character and memory of the dead. Every one acquainted with the phraseology of the law, is well aware that the epithets "fraudulent," and "collusive," are often applied in courts to transactions which, in common parlance, would be characterized but as adroit speculations, or sharp bargains, where the party who has gained an advantage thereby would not subject his character to any imputation of moral obliquity.

Although no parol testimony has been taken in this case, and there is no evidence of direct imposition by the suggestion of any specific falsehood, by Simon Gratz, in order to gain an advantage from Leah Phillips in the concoction of the agreement; yet, from the answers and exhibits, the following facts appear to be satisfactorily established.

1. Leah Phillips, at the time of this transaction, was old, infirm, and nearly blind.

2. She was in necessitous circumstances.

3. She was evidently without any knowledge of the value of the property conveyed, or the merits of the controversies attempted to be settled, or of her own individual rights or duties as a trustee.

4th. Simon Gratz was the only person cognizant of the transaction, who was fully and accurately informed on the whole subject, having conducted the litigation connected with it for over twenty years.

5th. Mrs. Leah Phillips consulted with her friends John Moss and Lyon J. Levy, but they were equally ignorant of every fact touching the merits of the case.

6th. They were not only ignorant of the truth, but were misinformed as to the most essential feature of the case in which they were called on to advise.

7th. The whole transaction was carefully concealed from the children of Bilah Cohen, the persons who ought to have been consulted, and who were most competent to advise, and whose property was disposed of without any consideration whatever to be paid to them.

8th. Leah Phillips ignorantly consented to confess two judgments for the same claim.

9th. She agreed to withdraw exceptions to the report of auditors who had undertaken to overhaul the settlement of a partnership account made fifty-three years before; and confess judgment for a large sum, of the justice of which she could not possibly have any knowledge.

10th. The agreement which her friends Moss and Levy advised her to accept and execute, was entirely different, in the most essential point, from the deed executed in fulfilment of it. By the agreement, Mrs. Phillips was to transfer all her interest in the estate of Joseph Simon to Simon Gratz for the sum of fifteen hundred dollars. By the deed executed in pursuance thereof, she conveyed "all the right, title, and interest of Joseph Simon, at and immediately before his decease, "to all his lands and moneys, principal and interest," in fine, the whole trust estate left in her hands, after conveying Michael Gratz's interest mentioned in the first item of the agreement.

11th. While by this deed Leah Phillips conveyed, not only her own interest as one of the residuary devisees of Joseph Simon, but that of the children of Bilah Cohen, Simon Gratz pays no other consideration for the whole than he had agreed to give for the half.

12th. The witnesses to the deed, John Moss and Lyon J. Levy, who acted as the friends and advisers of Leah Phillips, both declare their ignorance of its contents and effect, and that they believed that the interests of no other persons were affected thereby than those of Mrs. Phillips.

13th. Simon Gratz was fully aware that in this transaction Mrs. Phillips was either ignorantly or collusively disposing of the subject matter of the trust, not for the benefit of the cestui que trusts, but to supply her own necessities, and without any adequate consideration.

14th. Assuming that the $1,500 was not the only consideration, but that, according to the agreement, the overplus was to be applied to the satisfaction of the judgments in favor of Michael Gratz's estate, yet Simon Gratz knew that this was a misapplication of the trust funds, and that he and Mrs. Phillips had no right to apply the property of complainants to the satisfaction of judgments which he held against other persons.

It has long since ceased to be doubted that pecuniary residuary legatees may question the validity of a collusive and fraudulent disposal of assets by an executor, (see 1 Stor. Eq., p. 424; Petrie vs. Clark, 11 S. and R., 377;) and it is equally well settled that equity will decree a trust in invitum against a party who purchases trust property in violation of the objects of the trust. In such cases courts of equity force the trust upon the conscience of the guilty party, and compel him to hold the

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property subject to it, in the same manner as the trustee held it. (See 2 Story Eq., sec. 1257, and cases cited.)

The case of Osgood vs. Franklin (2 John. Chan., 23) has been cited and relied upon by defendants' counsel as governing this. But, in that case, inadequacy of price was the sole ground of complaint. In this, the complainants do not attack the deed and agreement on the ground of mere inadequacy in the consideration. That forms but a single element, out of many, tending to show actual fraud and collusion. Here the trust property has been obtained, not only for an inadequate consideration, but, so far as respects the rights of the Cohens, for no consideration at all. And although there is no direct testimony of false suggestions, made by the purchaser for the purpose of deception, yet the difference between the deed and the contract, the transfer of the whole for the price of the half, leave that inference almost unavoidable; more especially when the whole transaction exhibits the features of total inequality between the contracting parties; of advantage taken by the sharp-sighted over the blind; by the strong over the weak; by wealth over want; by knowledge over ignorance; and even if we assume that Leah Phillips was fully aware of the consequence of her acts, and acted under no deception, yet the facts plainly establish a collusion between the purchaser and the trustee to wrong, if not rob, the cestui que trusts.

So far at least as this transaction affects the interests of innocent third persons, it is a case in which equity peculiarly rejoices in giving a remedy to the injured parties; where it will inflict the trust upon the conscience of the purchaser, and compel him to hold the property subject to the trust; or, if sold, to account to the cestui que trusts for its full value.

We are of opinion, therefore, that the complainants, and the other children of Bilah Cohen, are entitled to a decree, as against the admistrators of Simon Gratz, to account for the full value of their interest in the lands sold by S. Gratz in his lifetime; as it appears that the trust property was all disposed of to bona fide purchasers, it would be unjust to annul the deed between Leah Phillips and Simon Gratz. But as he thrust himself into this trust improperly, as he unjustly refused to acknowledge the rights of the Cohens, and persisted in selling the property contrary to their frequent and urgent remonstrances, the measure of his liability must be the cash value of these lands, as ascertained by the jury—not the price which he obtained for them. For the same reason he can be entitled to no set-off for his services, and must be charged with interest since 1833.

But, before we conclude, it will be necessary to notice two other points made by the complainants' counsel, which we think are without any just foundation.

1st. As to the deed of Leah Phillips to Simon Gratz, for the interest of Michael Gratz in these lands. With this we think the Cohens have no concern. There is no reason why Leah Phillips, holding the legal title, might not transfer it to Simon Gratz, in trust for the heirs of his father, so far as she held it in trust for them. As to that portion of the agreement, the heirs of Michael Gratz are alone interested. They do

not ask our interference as to this deed, and the complainants are not entitled to it.

2d. As to the claim set up by plaintiffs for a remedy on the bond of indemnity given by Simon Gratz to Jos. Simon, in 1802. This claim was founded on the allegation that Simon Gratz got possession of the bond and destroyed it, and in consequence thereof the executors [of] Simon were compelled to take a non-suit in the action at law instituted in the court of Lancaster county.

To exhibit fully the nature and utter groundlessness of this claim would require a long and intricate narration of ancient transactions connected with the history of this case, which we do not think would be worth the labor of recapitulation. Suffice to say, that the complainants have wholly failed to show any right to the interference of the court to grant them any decree on account of this bond, and this for several reasons, each one by itself amply sufficient to justify our conclusion:

1. There is no sufficient evidence that the bond came into the hands of Simon Gratz, or that he destroyed it.

2. There is no evidence that it was in consequence of the absence of the bond that the non-suit was suffered.

3. That suit was wrongly brought, and plaintiffs could not have recovered it if they had had the bond in their hands, and could prove a breach of its covenants.

4. The evidence and admitted facts of the case show conclusively that there never was, and never could have been, a breach of the bond. (See opinion of Chief Justice Gibson, 1 Penn'a Rep., 358.)

Lastly, as to the two suits in which exceptions to the reports of auditors were filed. It appears that the agreement, so far as it respected them, has never been executed, owing to the interference of J. S. Cohen, esq., soon after it was made. The suits are still open and pending on the records; and if it is thought advisable to continue the litigation through another half century, the complainants are entitled to an injunction against the administrators, to restrain them from setting up any paper signed by Mrs. Phillips, in pursuance of the agreement to hinder further proceedings in these suits.

The bill is dismissed without costs as to the other defendants, John Moss, Lyon J. Levy, Isaac Phillips, and Isaac B. Phillips.

By the court. R. C. GRIER.

Whereupon the said Louisa Gratz, Edward Gratz, David Gratz, and Isaac Prince, executors, &c., pray leave to appeal from the decree, so as aforesaid made and pronounced, to the Supreme Court of the United States; which said appeal is allowed, upon security being given. And thereupon Jacob Lex and Thomas Diehl justify, in the sum of twenty thousand dollars, and are accepted as sureties on the appeal.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, sct:

I certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States, in and for the

property subject to it, in the same manner as the trustee held it. (See 2 Story Eq., sec. 1257, and cases cited.)

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The bill is dismissed without costs as to the other defendants, John Moss, Lyon J. Levy, Isaac Phillips, and Isaac B. Phillips.

By the court. R. C. GRIER.

Whereupon the said Louisa Gratz, Edward Gratz, David Gratz, and Isaac Prince, executors, &c., pray leave to appeal from the decree, so as aforesaid made and pronounced, to the Supreme Court of the United States; which said appeal is allowed, upon security being given. And thereupon Jacob Lex and Thomas Diehl justify, in the sum of twenty thousand dollars, and are accepted as sureties on the appeal.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, sct:

I certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States, in and for the

eastern district of Pennsylvania, in the third circuit, in a certain suit in equity therein lately depending, between Samuel M. Cohen and others, complainants, and Simon Gratz and others, defendants.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of the said circuit court, at Philadelphia, this
[L. S.] second day of December, A. D. 1848, and in the seventy-third of the independence of the said United States.

GEORGE PLITT,
Clerk of circuit court.

The executors of GRATZ, appellants,
vs.
COHEN et al., appellees.

Appeal from the circuit court for the eastern district of Pennsylvania.

And now, March 29, 1850, it is agreed by the parties in this cause, that the paper hereto appended on A, being the full exemplification of the record of an action, &c., in which the administrators of M. Gratz are plaintiffs, and Levi Phillips, Leah Phillips, and Belah Cohen, are defendants. Common pleas of Lancaster county, January term, 1822, No. 162; and B, the administration account of Belah Cohen be returned as part of the record in this case, (the same having been accidentally omitted,) filed and printed as if diminution of the record had been suggested, and a certiorari duly issued and returned.

WILLIAM B. REED,
J. G. CLARKSON,
For appellants.
BENJ. TILGHMAN,
THOMAS A. BUDD,
For appellees.

A.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased,
vs.
LEVI PHILLIPS, Leah Phillips, and Belah Cohen.

Amicable action in the common pleas of Lancaster county, of January term, 1822. Case.

We agree that the above action on the case be entered in the common pleas of Lancaster county, of the term of January, 1822, and we do hereby refer all matters unsettled and in variance between the parties, to Casper Shaffner, jr., John Reynolds, and Joseph Ogleby, or to a majority of them, to meet at the house of Colonel Jacob Slough, in the city of Lancaster, at any time the parties shall agree upon, upon thirty days' notice; and to make their award into the protonotary's office, with power to adjourn from time to time, until the cause shall be decided. And it is agreed that the arbitrators shall have no power in relation to any lands unsold at the time of instituting this suit, and that no advantage be taken by either party as to the form of suit, or the liability of the parties in it; and that the award and judgment thereon be final.

Witness our hands this 29th January, A. D. 1822.

SIMON GRATZ,
One of the administrators of Michael Gratz.
LEVI PHILIPS,
Executor of Joseph Simon.

MOLTON C. ROGERS,
Attorney for defendants.
J. SIMON COHEN,
Attorney for defendants.
WILLIAM NORRIS,
Attorney pro Q.

In the court of common pleas of Lancaster county. January term, 1822. No. 162.

(*Copy of appearance docket entry.*)

SIMON GRATZ, Joseph Gratz, and Jacob, administrators of Michael Gratz, deceased,
vs.
LEVI PHILIPS, Leah Philips, and Belah Cohen.
} 162.

Amicable action on the case.

Entered January 30th, 1822, and by an agreement in writing, filed, all matters unsettled and at variance between the parties, are referred [to] Casper Shaffner, jr., John Reyolds, and Joseph Ogilby, or to a majority of them, to meet at the house of Colonel Jacob Slough, in the city of Lancaster, at any time the parties shall agree upon, upon thirty days' notice; and to make their award into the prothonotary's office, with power to adjourn from time to time, until the cause shall be decided. The arbitrators to have no power in relation to any lands unsold at the time of instituting this suit; and that no advantage be taken by either party as to the form of suit, or the liability of the parties in it; and that the award and judgment thereon be final.

August 10th, 1822. Report of arbitrators filed, finding for the plaintiffs $5,211 61, arising out of the money actually received for the sale of lands, as far as the account sales for the same have been furnished to the arbitrators. They also find the sum of $1,839 86 to be due the plaintiffs, being the half of the amount of sales of land now outstanding, as far as the same has been exhibited to the arbitrators; which sum of $1,839 86 to be paid to the plaintiffs, as the same shall come to the hands of the defendants. (See statement annexed to the award filed.) Same day judgment nisi.

August 12th, 1822. Exceptions to the report filed. June 10th, 1824. Judgment by nisi, the court that the award be set aside.

Writ of error to the Supreme Court.

May 2d, 1826. Transferred to the district court, June term, 1826, No. 368.

In the district court for the city and county of Lancaster.

(*Copy of appearance docket entry.*)

Simon Gratz, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased, vs. Levi Philips, Leah Philips, and Beliah Cohen.	368.	Narr. filed.

Amicable action on the case.

Refered to referees, who made report, which was set aside by the court, (see common pleas docket.) Writ of error to the Supreme Court to May term, 1825.

Judgment affirmed by the Supreme Court, and record remitted (see decree filed) November 10th, 1828.

Transferred from the common pleas of January, 1822, No. 162.	December 14th, 1827. Defendants plead non assumpsit, payment with leave, &c., actio non accrevit infra sex annos, set off, with leave to add, alter, and amend. Replication non solvit, that the action did accrue within six years. Issues and rule for trial.

April 25th, 1828. Removed by certiorari to the circuit court, to September, 1828. No. 1.

Copy of circuit court docket, September term, 1828, No. 1.

Simon Gratz, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, dec'd, vs. Levi Philips, Leah Philips, and Beliah Cohen.	Case. Removal from the district court of June term, 1826, No. 368, by certiorari. Defendants plead non assumpsit, payment with leave, &c., actio non accrevit infra sex annos, set off, with leave to add, alter, and amend. Replication non solvit, that the action did accrue within six years. Issues and rule for trial.
April 8th, 1829, rule to take depositions on ten days' notice due, exit second copy of rule due.	Continued from term to term, and now, May 2d, 1829, a jury being called and sworn, &c., and after some progress made in the trial of the cause,
May 5th, 1829, rule to take depositions on 10 days' notice, due.	continued in consequence of the sickness of one of the jurors.
Jury fund paid to prothonotary, and paid by him to county treasurer.	Continued from term to term. And now, April 27th, 1830, a jury being called, came, to wit, George Shober, John Wood, Godfried Zahm, George

June 5th, 1830, rule to take depositions on 10 days' notice, paid.
June 15th, 1830, rule to take depositions on 10 days' notice, due.
December 6th, 1830, rule to take depositions on 10 days' notice, due.
February 18th, 1831, rule to take depositions on 10 days' notice, due.
April 14th, 1831, rule to take depositions on 10 days' notice, due.

Elser, John Scott, Christian Newcomer, Abraham Bear, Geo. Gamber, Adam Dietrich, Andrew Dunlap, Daniel Holl, and Jas. Penny, twelve good and lawful men of the county of Lancaster, who, being duly empannelled, returned, elected by ballot, chosen, sworn or affirmed upon their oaths and affirmations, respectively, do say, that they find for the plaintiffs, seven thousand three hundred and forty-eight dollars and three cents damages, with six cents costs. May 1st, 1830. Judgment nisi.

Jury fund paid by prothonotary to county treasurer; see his receipt. ($——.)

May 4th, 1830, defendant moves for a new trial on reasons filed; same day motion overruled, and judgment for plaintiffs. Defendants appeal to the Supreme Court, exit record. June 4th, 1830, new trial awarded by the Supreme Court. (See decree, filed June 5th, 1830.)

And now, May 2d, 1831, a jury being called, came, to wit, Peter Weidner, John Overholtzer, David Snavely, John Hastings, Christian Good, Daniel Plank, Jacob Zook, Daniel Miller, Andrew Bushong, Peter Graybill, Jesse Lamburn, and David Jenkins, twelve good and lawful men of the county of Lancaster, who, being duly empannelled, returned, elected by ballot, chosen, sworn or affirmed, upon their oaths and affirmations, respectively, do say, that they find for the plaintiffs seven thousand nine hundred and sixteen dollars and seventy-three cents damages, with six cents cost. May 9th, 1831. Judgment nisi.

Fi. fa. to September, 1831, No. 1.

Same day Mr. Cohen, on reasons and affidavit filed, moves for a new trial; same day motion overruled, and judgment. Defendants, appeal to the Supreme Court, exit record. June 1st, 1831, nolle prosequi entered in the Supreme Court as to Mrs. Philips, and judgment affirmed as to the other defendants. (See decree, filed September 3d, 1831.)

Copy of fi. fa. and sheriff's return.

LANCASTER COUNTY, *ss.*

The Commonwealth of Pennsylvania to the sheriff of Lancaster county, greeting:

[SEAL.] We command you, that of the goods and chattels, lands and tenements, of Levi Philips and Beliah Cohen, in your bailiwic, you cause to be made and levied, as well the sum of seven thou-

sand nine hundred and sixteen dollars and seventy-three cents, which Simon Gratz, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased, lately in our circuit court, before our justices of the supreme court of Pennsylvania, recovered against them for their damages, which they sustained by occasion of a certain promise and assumption by the aforesaid Levi Philips and Beliah Cohen, made, and not performed; as one hundred and twelve dollars and fifty-seven cents, which, to the said administrators of Michael Gratz, deceased, in our same court, were adjudged for their costs and charges by them about their suit in that behalf expended, whereof the said Levi Philips and Beliah Cohen are convict. And have you those moneys before our justices of the supreme court at a circuit court to be held at Lancaster, for said county, on the first Monday in September next, to render to the said administrators of Michael Gratz, deceased, for their damages, and costs, and charges, aforesaid; and have you then and there this writ.

Witness the honorable John B. Gibson, chief justice of our supreme court at Lancaster, the twenty-first day of March, in the year of our Lord one thousand eight hundred and thirty-one.

CHRISTIAN BACHMAN, *Clk. C. C.*

MICHAEL GRATZ'S adm'S, vs. LEVI PHILIPS AND BELIAH COHEN. } September term 1831, circuit court; No. 1.

Levied on the right and interest of Levi Philips and Beliah Cohen, the 3d September, 1831, viz: Three lots of ground, fronting on Chesnut street, in the city of Lancaster; the one adjoining an alley on the line of Widow Herbert, lands of Philip Hilt and John Bausman, the others adjoining Philip Hilt, Wm. Boies, Mulberry street, and others. The improvements on the two last mentioned lots of ground is an excellent well of water.

For ADAM BARE, *Sheriff*.
H. MEHAFFY.

Inquisition.

Indented and taken at the public house of Henry Diffenbach, the tenth day of November, in the year of our Lord one thousand eight hundred and thirty-one, before Adam Bare, esq., sheriff of the county of Lancaster, by virtue of a writ of fieri facias to him directed, and to this inquisition annexed, by the oaths solemn and affirmations of Peter Reed, Martin Shreiner, J. Leonard, Daniel Vondersmith, George Daley, Robert Moore, Henry Diffenbach, Robert Elliott, William Heck, George B. Markley, George Koons, and Israel Carpenter, twelve good and lawful men of the bailiwick of the said sheriff, who, upon their oaths and affirmations aforesaid, respectively, do say, that the rents, issues, and profits of the right and interest of Levi Philips and Beliah Cohen, the 3d September, 1831, viz: Three lots of ground fronting on Chesnut street, in the city of Lancaster, the one adjoining an alley on

the line of Widow Herbert, lands of Philip Hilt and John Bausman, the others adjoining Philip Hilt and William Boies, Mulberry street, and others. The improvements on the two last mentioned lots of ground is an excellent well of water. Late the estate of Leah Philips and Beliah Cohen, in the same writ named, with the appurtenances, are not of a clear yearly value beyond all reprises, sufficient within the space of seven years to satisfy the debt and damages in said writ mentioned. In testimony whereof, as well the said sheriff, as the inquest aforesaid, to this inquisition have set their hands and seals. Dated the day and year first above written.

ADAM BARE, *Sheriff.* [L. S.]

Peter Reed	[L. S.]	Martin Shreiner,	[L. S.]
John Leonard,	[L. S.]	Robert Elliott,	[L. S.]
Robert Moore,	[L. S.]	Geo. B. Markley,	[L. S.]
Daniel Vondersmith,	[L. S.]	J. Carpenter,	[L. S.]
William Heck,	[L. S.]	George Daly,	[L. S.]
Henry Diffenbaugh,	[L. S.]	George Kuntz,	[L. S.]

(*Copy of the vend. exponas.*)

LANCASTER COUNTY, *ss.*

The Commonwealth of Pennsylvania to the sheriff of Lancaster county, greeting:

Whereas, by our writ of fieri facias, tested the twenty-first day of March, anno domini 1831, we commanded you, that of the [L. S.] goods and chattels, lands and tenements, of Levi Philips and Beliah Cohen, in your bailiwick, you should cause to be made and levied, as well the sum of seven thousand nine hundred and sixteen dollars and seventy-three cents, which Simon Gratz, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased, lately, in our circuit court of Lancaster county, before our justices of the supreme court of Pennsylvania, recovered against them for their damages, which they sustained by occasion of a certain promise and assumption by the aforesaid Levi Philips and Beliah Cohen made, and not performed, as one hundred and twelve dollars and fifty-seven cents, which to the said administrators of Michael Gratz, deceased, in our same court were adjudged, for their costs and charges by them about their suit in that behalf expended, whereof the said Levi Philips and Beliah Cohen are convict. And that you should have those moneys before our justices of the supreme court, at a circuit court to be held at Lancaster, for said county, on the first Monday in September then next, to render to the said administrators of Michael Gratz, deceased, for their damages and costs, and charges aforesaid; and that you should have there that writ. And whereas, you returned to our said justices, at the day and place aforesaid, that by virtue of our said writ, to you directed, you had seized and taken in execution the right and interest of Levi Philips and Beliah Cohen, viz., three lots of ground fronting on Chesnut street, in the city of Lancaster, the one adjoining an alley on the

line of Widow Herbert, lands of Philip Hilt and John Bausman, the others adjoining Philip Hilt, William Boies, Mulberry street, and others; the improvements on the two last mentioned lots of ground is an excellent well of water; late the estate of Levi Philips and Beliah Cohen; which remained in your hands, unsold for want of buyers, so that you could not have the moneys in the said writ mentioned, at the day and place in our said writ specified, as therein you were commanded. And that the residue of the execution of the said writ appeared in a certain schedule or inquisition, thereunto annexed, by which schedule or inquisition it is found that the rents, issues, and profits of the premises in your said return, annexed to the said writ mentioned, are not of a clear yearly value, beyond all reprises, sufficient, within the space of seven years, to satisfy the debt and damages in said writ mentioned. Therefore we command you, that the said three lots of ground, with the appurtenances, so by you seized and taken in execution, you expose to sale, and have you those moneys before our justices of the supreme court, at a circuit court, to be held at Lancaster, for said county, on the second Monday in December next, to render to the said administrators of Michael Gratz, deceased, for their damages and costs, and charges aforesaid. And have you then there this writ.

Witness the honorable John B. Gibson, chief justice of the supreme court, at Lancaster, the fifth day of September, in the year of our Lord one thousand eight hundred and thirty-one.

CHRISTIAN BACHMAN, *Prothonotary.*

Copy of execution, docket entries. Of September term, 1831, *No.* 1.

Simon Gratz, Joseph Gratz, and Jacob Gratz, adm's of Michael Gratz, deceased, *vs.* Levi Philips and Beliah Cohen. Origl. Sept., 1828, No. 1.	Damages,	$7,916 73	Fi. fa. issued Sept. 3d, 1831.
	Int. fr. May 9th, 1831,		
	Proth'y, S.,	$6 80	
	Proth'y, M.,	4 05	Norris, Montgomery,
	Proth'y, B.,	8 72	
	Att'y,	3 00	
	Pl'ffs,	90 00	'Property condem'd'
	Increase,	50	
		$113 07	Vend. exps. to next term, No. 1.

Of December term, 1831, *No.* 1.

Simon Gratz, Joseph Gratz, and Jacob Gratz, adm's of Michael Gratz, deceased, *vs.* Levi Philips and Beliah Cohen.	Damages,	$7,916 73	Vend. exps. issued, Nov. 11, 1831.
	Int. fr. May 9th, 1831,		
	Proth'y, S.,	$6 80	
	Proth'y, M.,	4 05	
	Proth'y, B.,	8 72	Norris, Montgomery,
	Att'y,	3 00	
	Pl'ffs,	90 00	
	Increase,	1 50	
		$114 07	"Real property sold for $471."

GRATZ'S ADMINISTRATORS,
vs.
PHILIPS et al.

The court charge the jury in this case, in answer to the questions submitted by plaintiff's counsel, as follows:

On the 1st, 2d, and 3d points submitted by the plaintiff, it is unnecessary to give you any further direction than is given already in the seventh point submitted by the defendant's counsel.

4. I do not consider Michael Gratz, or his representatives, as standing in the situation of bona fide purchasers, without notice, of Joseph Simons' claim to the land sold by the defendants, and therefore entitled to a preference. Michael Gratz had become the assignee of David Franks, who, with Joseph Simon, was a joint creditor of William Trent, who had given his bond, and a mortgage upon 7,500 acres of land, as you have heard, to David and Joseph Simons, jointly, to secure this debt, and at the same time a bond to Joseph Simons for a debt which he owed to him individually; and on the same day with the date of the mortgage to Frank and Simons, for the lands said to be the Præter lands, and probably as a security in this debt owing to Simons individually, Franks and Simons were upon an equal footing as to the joint debt, and one could not claim any preference over the other; Gratz, by the assignment of Franks, could claim nothing more than Franks had a right to.

Nor do I consider Gratz, in the subsequent arrangement with Simons, as a purchaser from Simons without notice. It was an agreement to divide the fruits of the mortgage debt between them, in which they claimed to be jointly interested; and if, in doing so, Simons had agreed through mistake to divide with Gratz a tract of land, to which he had an exclusive right, and which formed no part of the mortgaged premises, as was, no doubt, supposed by the parties, the plaintiffs would not be entitled to claim any portion of the money arising from the sale of such tract, although it was embraced in the declaration of trust.

5th. I consider the outstanding assignment, or title, of 1785, after the agreement between Gratz and Simons, upon which the indemnity was given by the first to the latter, and the giving of the indemnity, if fairly done, no bar whatever to the plaintiffs' recovery in this action; that such an agreement was fairly made cannot well be doubted, for all the assignments appear to have been present, and referred to, and the arrangement itself to have been concluded by Simons, with the assistance of his counsel; in addition to this, if it were necessary to enable the plaintiffs to recover, I think from the lapse of time, and no attempt whatever on the part of any one under the first assignment to assert a right, it might well be presumed that debt thereby created was satisfied, or extinguished in some way; the only claim that we heard of under that assignment of 1786, has been purchased in, and relinquished by Mr. Gratz, who can make none of it to prejudice Simons or his representatives.

6th. If Simons did fall into a mistake about the George Valley lands, and conceive them to be his own exclusive property, when in truth they were part of the mortgaged estate, to secure the payment of the joint debt owing to him and Franks, that cannot exonerate him or these defendants from the responsibility they would otherwise be under to the plaintiffs, on account of the George Valley or any of the other lands embraced in the mortgage, and declarations of trust. I do not see how such a mistake can prejudice the Gratz's claim in this suit.

7th. If you should believe that Joseph Simons made his several declarations of trust without any circumstances of fraud practised upon him by Mr. Gratz, or any person acting for him as his agent, in order to procure them, the defendants would be bound to account for and pay over one-half of the nett proceeds of the sales of the Cox and Donagan tracts of land, notwithstanding Joseph Simons might have been mistaken as to what was the George Valley lands, from 1790, to his death, in 1804; but still I do not think that this would stop the defendants from showing that these two tracts of land were the individual property of Joseph Simons, and introduced into the declarations of trust through mistake; and if they done so, and convinced you that such was clearly the case, the plaintiffs ought not to recover any portion of the moneys arising from them, but you ought to be well satisfied that such mistake did actually occur. It is clear that these two tracts are made, by the declaration of trust executed by Joseph Simons, a part of the trust lands, and nothing but testimony, equally clear, ought to set such a declaration of trust, reduced to writing, and most deliberately made, aside.

8th. No regular and conclusive evidence has been given of the tracts of land in the names of Cox, Donagan, and Trent, respectively, having ever been granted by the former proprietors, or the commonwealth; but as both parties claim under William Trent, I do not consider the want of such evidence sufficient of itself to defeat the defence that has been set up against the plaintiffs' claim for the moneys arising from the sale of the Cox and Donagan lands; the mistake may have taken place without any title having been granted, but I repeat, that the evidence of it ought to be such as could leave no reasonable doubt upon your minds that the fact was ; you ought to find against the defendants as to the money arising from these two tracts also.

JOHN KENNEDY.

GRATZ'S ADMINISTRATORS
vs.
L. PHILIPS et al.

In circuit court.

The court is respectfully requested to charge the jury, and reduce the charge to writing, and file the same, upon the following points:

1st. That the assignment of May 18, 1790, from David Franks to B. and M. Gratz, *and M. Gratz*, under which the plaintiffs claim, is

invalid; the said D. Franks having, by a previous assignment, dated 20th March, 1786, transferred all his property, real and personal, and that the acceptance of the order, and the several declarations of trust, though absolute on the face of them, made upon the faith of the validity of the assignment of 1790, are not binding.

2d. That if the jury believe that at the time Joseph Simon accepted the order of the 22d May, 1790, he was ignorant of the previous assignment of D. Franks of 20th March, 1786, and that Michael Gratz, or those who acted for him, knew it, and concealed the fact from Joseph Simon, that then the said acceptance of 22d May, 1790, and the subsequent declarations, are of no validity to entitle plaintiff to recover.

3d. That if the jury believe from the evidence that Joseph Simon was induced to accept the indemnity, and make his declarations of trust of 26th July, 1802, or of 12th January, 1804, by any representations of Simon Gratz, contained in the letter of May 23d, 1802, no evidence having been offered of the correctness of such representations, those said declarations are to be considered as not binding or affecting the said Joseph Simon.

4th. If the jury believe that the tract in the name of William Cox, sold to John Wicks, and the one in the name of Christian Donegan, sold to George Knepp, called the Proctor lands, were the private property of Joseph Simon, the defendants are not liable to account for any part of the proceeds of the sales of these tracts. The tract in the name of William Trent having heretofore been accounted for by mistake, should, for the same reason, be credited to defendants.

5th. Leah Philips being a feme covert, the plaintiffs cannot recover under the pleadings in this cause.

6th. If plaintiffs are entitled to recover at all, which we deny, no interest can be recovered, except from the time of demand; and as no proof has been given of any demand for any moneys received from sales of lands since 1806, interest can only be recovered from the institution of the suit.

7th. The statute of limitations is a bar to all the recovery of moneys received six years prior to the commencement of the action.

J. SIMON COHEN,
May 5th, 1831. B. CHAMPNEYS.

GRATZ'S ADMINISTRATORS
vs.
PHILIPS et al.

The court in this cause charge the jury in answer to the points submitted for by the defendants counsel, as follows:

1st. The assignment of the 18th May, 1790, from David Franks to B. and M. Gratz, and to M. Gratz, would not be valid against the prior assignment, dated the 20th of March, 1786, to Cox and others, as long as the purpose for which this last assignment was made, remained unanswered, and the assignment itself in full force; but if the ob-

ject of the trust in it has been satisfied without touching the debt, which was transferred to the Gratzes by the assignment of 1790, this last assignment would be good, and the assignee under it entitled to claim Frank's proportion of the debt thereby assigned. And in addition to this, it may be observed that this assignment of 1786 ceases to form any objection to the plaintiffs' recovery in this action, because by the subsequent arrangements between Simons and Gratz, Simons agreed to pay absolutely, notwithstanding that assignment, and took an indemnity from Gratz to secure him against any loss from doing so.

2d. If you believe that at the time Joseph Simons accepted the order of the 22d of May, 1790, that besides, ignorant of the previous assignment of David Franks of the 20th March, 1786, and that Michael Gratz, or those who acted for him, knew of it, and concealed the fact from Joseph Simons, that would be sufficient to avoid the assignment of 1790, as regarded Simons and his acceptance of the order, and as against the effect of the first assignment, but would not avoid the subsequent declarations of trust, if made with a full knowledge of both assignments, as certainly they were if the testimony on this part of the case be true, of which you are to judge. For my part, I have not been able to discover from the testimony given, that the Gratzes, or those who acted for them, knew anything more of the assignment of 1786, at the time Joseph Simons accepted the order, than Simons did himself. If any such testimony was given, you will no doubt recollect it. I do not. It is likely, from a letter written by Simons to Gratz, in 1802, that Simons did not know of it until then, and that from Simon Gratz's reply, he knew of it long before; but it does not seem from that, he knew any thing more of it, in 1790, when the order was accepted, than Simons did.

3d. If you should believe from the evidence that Joseph Simons was induced to accept the indemnity, and make his declarations of trust of 26th July, 1802, and of the 12th of January, 1804, by any representations of Simon Gratz, contained in the letter of 23d of May, 1802, and that no evidence has been given of the truth of such representations, still the declarations of trust by Joseph Simons may be good and binding upon him. If Simon Gratz made any representations in that letter which are not true, it lay upon the defendants to prove the falsehood of them; for it ought not to be presumed that he told a lie, or intended to deceive, or to commit a fraud; nor do I consider it necessary that the plaintiff should have proved the truth of the representations contained in this letter, with a view to avoid the assignment of 1786, because the indemnity seems to have been given by Gratz to Simons, for the very purpose of protecting him against that assignment, whether good or bad, and to have been predicated upon the very idea of Simons' unwillingness to confide implicitly in the information and opinion, so given by Gratz, on this land, just as a man who is about to buy a horse of another, whose opinions and representations, with respect to the soundness and qualities of the horse, he is unwilling to trust, and therefore requires a warranty from the seller, that he shall indemnify him against

any loss that may arise from the horse being otherwise than as represented by the seller. In such case the buyer trusts to the warranty, and not to the honesty or judgment of the seller.

4th. If you believe that the tracts of land, one in the name of William Cox, sold to John Wicks, and the other, in the name of Christian Donagan, sold to George Knepp, called the Proctor lands, were the private property of Joseph Simons, and introduced into the declarations of trust through mistake or fraud, the defendants would not be liable to account for the moneys arising from the sale of them; and although the money arising from the sale of the tract, in the name of William Trent, which is said to have been also one of the Proctor tracts of land, may have been paid under a mistake to the plaintiff's intestate, yet it was incumbent upon the defendants to make out such mistake clearly, so as to leave no doubt about it; that, however, even in the opinion of the defendant's counsel, has not been done; for Mr. Champneys has not honorably and candidly admitted to you that they have failed in making such proof, and, if you think so, you cannot allow such set-off.

5th. The circumstance of Leah Phillips being a feme covert, is not sufficient to defeat the plaintiffs' right to recover in this action, under the state of the pleadings in it. I decide this point in this way, and give this direction to you, because I consider it so adjudicated by the supreme court, on the appeal taken in this case from the circuit court.

6th. If you should find in favor of the plaintiffs, and find that it was the duty of the defendants to have paid over to the plaintiffs, from time to time, as they the defendants received them, and that they have wilfully withheld payment after demand made, and still continue to do so, it would be fair and just to allow interest from the time of the receipt of the money to the present time.

7th. The statute of limitations is not applicable to the plaintiffs' claim in this action, and will not be a bar to their recovery of the moneys claimed in it, which were received by the defendants six years before the commencement of it. The moneys claimed by the plaintiffs are received by the defendants under a liability to account to the plaintiffs; for these must have been received by them as trustees, and held subject to the order of the plaintiffs. It is upon this principle, that executors withholding the payment of legacies, or administrators, the distributary shares of the intestate's estate from the legatees or distributees for the space of six years, from the time or times at which they ought to have been paid; and no suit or suits, brought by those entitled to demand or recover such legacies or distributary shares, should not be protected from paying, by interposing and pleading the statute of limitations. The trust, under which the plaintiff arises, was created by the express agreement of Joseph Simons, the trustee, and not by implication of law, which he devolves upon the defendants by his will, who have voluntarily undertaken execution of it, and of the trust, and cannot shelter themselves from rendering a just account by the statute of limitations.

JNO. KENNEDY.

[Endorsed] 1. September term, 1828. Circuit court.

MICHAEL GRATZ'S adm'rs
vs.
LEVI PHILLIPS et al.

Defendants' points and answers, filed, May 7th, 1831.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, adm'rs of Michael Gratz, dec'd,
vs.
LEVI PHILLIPS, Leah Phillips, & Belah Cohen.

His honor, Judge Kennedy, is respectfully requested to charge the jury on the following points of law, viz:

1. That the several declarations of trust, executed by Joseph Simon to Michael Gratz, constituted Joseph Simon the trustee of Michael Gratz, for the sale of the lands of which the trust was declared; and as the moneys sought to be recovered in this action arose from the sales of some of these lands, made by the defendants under the powers contained in the will of Joseph Simon, the plea of action, non accrevit infra six annos, forms no bar to the recovery of the plaintiffs, even if six years had run.

2. That, as the accounts of the sales of these lands by the defendants contains entries of debit and credit, from 1804 till 1821, a few months before the institution of this suit, the plea of the statute of limitations cannot avail the defendants.

3. That as the present plaintiffs brought a suit to August term, 1806, No. 120, in the common pleas of Lancaster county, for the recovery of money arising from the sale of lands held under the joint purchase of 1790, and the several declarations of trust given in evidence in this cause; and as this suit was regularly continued till January term, 1822, when it was reached, and the trial progressed in for two or three days, and the jury dismissed by the consent of the parties, and the agreement of the 29th of January, 1822, to enter the amicable action, now trying, entered into by the parties, expressly stipulating that all matters in variance relating to the sale of the trust lands should be referred to the referees named; and that no advantage should be taken by either party, as to the form of action or the liability of the parties in it, it is not now competent for the defendants to set up the bar of the statute of limitations.

That purchasers, for a valuable consideration, bona fide, and without notice of any claim upon the estate, are entitled to the peculiar favor and protection of courts of justice; and as Michael Gratz, the plaintiffs' intestate, for a valuable consideration, purchased from Joseph Simon a moiety of the lands to Joseph Simon, by the sheriff of Northumberland, without notice at the time of the purchase of any title or claim to the lands by Joseph Simon, or any other person adverse to the title acquired by Joseph Simon, and constituted him the trustee to sell the lands thus purchased, it is not competent for the representatives of J. Simon to

resist the recovery of the plaintiffs for their moiety of the proceeds of the lands sold on the ground of the outstanding title in third persons.

5. That the outstanding title of 1786 having been purchased in by Simon Gratz, in pursuance of his bond of indemnity, is extinguished, and can form no bar to the plaintiffs' recovery in this action; and even if this were not so, the jury are bound, from the lapse of time, and the non-action and acquiescence of the trustees, to presume the trust created by the deed of 20th of March, 1786, satisfied and extinguished.

6. That if the jury believe that, in August, 1790, when J. Simon purchased at the sheriff's sale, and sold a moiety of the lands purchased to Michael Gratz, he, Simon, had and possessed the title papers to the tracts called the George's Valley tracts; he did know, or was bound to know, that these lands were acquired under the deed of the 26th April, 1779, from W. Trent, in payment of the bond given to Franks and Simon, and were company property, and not his own private estate; and that the impression of J. Simon, wheresoever derived, that the George's Valley lands were his private estate, cannot affect M. Gratz, who was a bona fide purchaser, on the 2d of August, 1790, of the tracts now claimed by the representatives of J. Simon.

7. That if the jury believe that J. Simon made his several declarations of trust, without the circumvention or fraud of Mr. Gratz, or any other person acting as his agent, practised upon him in order to procure these papers, then J. Simon and his representatives are estopped in conscience, justice, and law, from denying the rights of plaintiffs to recover the half of the nett proceeds of the tracts, in the names of Cox, Donagan, and Trent, even if J. Simon himself entertained mistaken impressions as to what were his George's Valley lands, from 1790 till his death in 1804.

8. That the defendants have shown no title to the tracts in the names of Cox, Donagan, and Trent; and that the plaintiffs are, therefore, entitled to recover the proceeds of these tracts.

WILLIAM NORRIS,
JOHN R. MONTGOMERY, } *Pr. Qu.*

May 4th, 1831.

[Endorsed] 1. September term, 1828. Circuit court.

MICHAEL GRATZ'S adm'rs
vs.
LEVI PHILLIPS et al.

Plaintiffs' points and answers, filed, May 7th, 1831.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, adm'rs of Michael Gratz, dec'd,
vs.
LEVI PHILLIPS, Leah Phillips, and Belah Phillips.

In the circuit court of Lancaster county.

And for further plea in this behalf the said defendants, by leave of court, say, that the said plaintiffs ought not to have and maintain their

aforesaid action thereof against them, because they say that the said Michael Gratz, deceased, in his lifetime, and the said plaintiffs, as the administrators of said Michael, since his decease, before and at the time of the commencement of this suit, to wit, at the county aforesaid, were indebted to them in a large sum of money, to wit, ten thousand dollars, for so much money before that time by them, for the use of the said plaintiffs and the said intestate, and their special instance and request, paid, laid out, and expended; and also the further sum of five thousand dollars, for so much money before that time by them, for the use of the said defendants, had and received; and also in another and further sum of five thousand dollars, for work and labor done, and services performed by the said defendants, at the special instance and request of the said intestate, and of the plaintiffs aforesaid; which said several sums of money, now due and owing as aforesaid, exceed the damages alleged to be sustained by the said plaintiffs and their intestate, by reason of the alleged non-performance by the said defendants of the said several supposed promises and undertakings in the said declaration mentioned, and out of which said before mentioned sums, so due and owing to the said defendants, they, the said defendants, are ready and willing, and hereby offer to set off and allow to them the full amount of the damages sustained, according to the form of the act in such case made and provided. And this the said defendants are ready to verify; therefore they pray judgment, if the said plaintiffs ought further to have and maintain their aforesaid action thereof against them, &c.

B. CHAMPNEYS,
HENRY ROGERS,
Atty's for defendants.

March 19th, 1830.

Plaintiff's reply to the above plea, "nil debent, issue and rule for trial."

[Endorsed] Gratz's administrators
vs.
Levi Phillips et al.
Plea of set-off, filed, May 2d, 1829.

Lancaster county, ss.

Simon Gratz, Joseph Gratz, and Jacob Gratz, administrators of all and singular the goods and chattels, rights and credits, which were of Michael Gratz, deceased, who died intestate, complain against Levi Phillips, Leah Phillips and Belah Phillips, of a plea of trespass on the case, &c., for that whereas the said Levi, Leah, and Belah, on the first day of January, in the year of our Lord one thousand eight hundred and eleven, at the county aforesaid, were indebted to the said Michael Gratz, in his lifetime, in the sum of ten thousand dollars, lawful money of the United States, for so much money before that time had and received by them to the use of the said Michael; and being so indebted, they, the said Levy, Leah, and Belah, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, in consideration thereof un-

dertook, and then and there faithfully promised the said Michael, well and truly to pay unto him the said sum of ten thousand dollars lawful money as aforesaid, when they should afterwards be thereunto required. Nevertheless the said Levy, Leah, and Belah, their promise and undertaking as aforesaid, in no wise regarding, but contriving and craftily and subtly intending in this behalf to deceive and defraud the said Michael in his lifetime, and the said Simon, Joseph, and Jacob, as administrators as aforesaid since his death, have not nor hath either of them yet paid the said sum of money, or any part thereof, to the said Michael in his lifetime, or to the said Simon, Joseph, and Jacob, as administrators as aforesaid, since the death of the said Michael, although often requested so to do, but the same or any part thereof to pay have, and each of them hath, hitherto wholly neglected and refused. And whereas the said Levy, Leah, and Belah, afterwards, to wit, on the day and year aforesaid, at the county aforesaid, were indebted to the said Michael Gratz in his lifetime, in the further sum of ten thousand dollars like lawful money aforesaid, for so much money by them had and received to and for the use of the said Michael, and being so indebted, and the said several sums of money being and remaining wholly due and owing, unpaid and unsatisfied, they, the said Levy, Leah, and Belah, in consideration thereof afterwards, and after the death of the said Michael, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and twenty-two, at the county aforesaid, undertook, and then and there faithfully promised the said Simon, Joseph, and Jacob Gratz, as administrators as aforesaid, to pay to them the said sum of money in this count mentioned, when they should be thereunto afterwards requested. And whereas the said Levy, Leah, and Belah, on the day and year last aforesaid, at the county aforesaid, were indebted to the said Simon, Joseph, and Jacob, as administrators of the said Michael Gratz, deceased, as aforesaid, in the further sum of ten thousand dollars, lawful money as aforesaid, for so much money by them before that time had and received to and for the use of the said Simon, Joseph, and Jacob, as administrators as aforesaid, and being so indebted, they, the said Levy, Leah, and Belah afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, in consideration thereof undertook, and then and there faithfully promised them, the said Simon, Joseph, and Jacob, as administrators as aforesaid, that they would well and truly pay to them, as administrators as aforesaid, the said last mentioned sum of money when they should be thereunto afterwards requested. Nevertheless, the said Levy, Leah, and Belah, their several promises and undertakings in no wise regarding, but contriving and fraudulently intending the said Simon, Joseph, and Jacob, as administrators as aforesaid, in this behalf craftily and subtly to deceive and defraud, have not, nor hath either of them, as yet paid the said several sums of money, or any or either of them, or any part thereof to the said Simon, Joseph, and Jacob, as administrators aforesaid, although often requested so to do, but the same or any part thereof have hitherto wholly neglected and refused, and still do neglect and refuse

to the damage of them, the said Simon, Joseph, and Jacob, as administrators as aforesaid, twenty thousand dollars, and therefore they bring suit, &c.

JOHN DOE,
RICHARD ROE, } Pledges, &c.

[Endorsed] 386.

June term, 1826.

GRATZ'S ADMINISTRATORS,
vs.
PHILLIPS et al. } Narr. filed, Nov. 3, 1827,

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased,
vs.
LEVI PHILLIPS, Leah Phillips, and Belah Cohen.

In the circuit court of Lancaster county, of September term, 1828.

And as to the plea "quod actio non accrevit infra sex annos," above pleaded by the defendants against them, the plaintiffs, the plaintiffs say that they ought not to be precluded from having their action against them, the defendants, because they say that the said money in the several promises and undertakings aforesaid were received by the defendants, as trustees of the plaintiffs and their intestate, and as such constitute a fundholder in trust by the defendants for the use of the plaintiffs, and now due and owing to them, to wit, at the county aforesaid, and this they are ready to verify; wherefore they pray judgment and their damages on occasion of the premises to be adjudged to them.

Issue and rule for trial.

[Endorsed] 368.

June term, 1826.

GRATZ'S administrators
vs.
PHILIPS et al.

Replication to defendants' plea, filed April 14th, 1829.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, adm's of Michael Gratz, dec'd,
vs.
LEVI PHILIPS, Leah Philips, and Belah Cohen.

In the district court of Lancaster county, September term, 1848, No. 1.

The defendants move for a new trial, for the following reasons, viz:

1. The court erred in not admitting in evidence the exemplification of the record of the action of account render between the administrators of Michael Gratz, and the executors of Joseph Simon, brought in the supreme court of the eastern district of Pennsylvania, to July term, 1807, No. 6.

2. The court erred in rejecting part of the deposition of Zalegman Phillips, a witness on behalf of the defendants.

3. The court erred in admitting the deposition of Levy, Andrew Levy, taken under the commission in the action of account render in the supreme court of the eastern district of Pennsylvania, to July term, 1807, No. 6, the record of which suit had been rejected as above stated.

4. The court should have charged the jury that the agreement in relation to the liability of the parties only extended to the award and proceedings of the arbitrators, and that it had no connection with the agreement to enter the amicable action, the agreement to enter the action and that to refer being entirely distinct.

5. Because the court ought to have charged the jury, that as there was no evidence of the receipt of any money arising from the sales of lands by any of the defendants, except Levi Phillips, or that the others were jointly responsible, the issue was not supported, and the verdict should be for the defendants.

6th. Because the court ought to have directed the jury, that as it was in evidence that Leah Phillips was a feme covert, the action against the defendants jointly for sums received by Levi Phillips, could not be legally sustained.

7th. Because the court should have charged the jury, that the assignment of the 18th of May, 1790, from David Franks to B. and M. Gratz, and M. Gratz, was invalid, and that consequently the declaration of trust of 2d of August, 1790, was without consideration and no validity, and that the declaration of 26th July, 1802, and of 12th January, 1804, though absolute on the face of them, were of no validity, if the assignment of 18th of May, 1790, were invalid.

8th. Because the court should have charged the jury, that if they believed that at the time Mr. Simon accepted the order on the 22d May, 1790, he was ignorant of the previous assignment of David Franks of 20th March, 1786, and that Michael Gratz, or those who acted for him, knew it and concealed the fact from Joseph Simon, that then the said acceptance of 22d May, 1790, and the subsequent declarations, were of no validity to entitle the plaintiffs to recover.

9th. The court should have instructed the jury, that if they believe from the evidence, that Joseph Simon was induced to accept the indemnity and make his declarations of trust 26th July, 1802, or of 12th January, 1804, by any representations of Simon Gratz contained in the letter of 23d May, 1802, which said representations have not been proved or attempted to be proved, then said declarations are to be considered as not binding or effecting the said Joseph Simon.

10th. That the court ought to have left it to the jury to decide whether the acceptance of 22d May, 1790, or any of the declarations of trust subsequently made by Joseph Simon, were under the circumstances obtained from him fraudulently or otherwise.

11th. The verdict is manifestly wrong, because it is in evidence that, at the time of the execution of the general declaration of trust, Mr. Simon,

who could neither read nor write, except his name, was under the mistaken impression that the George's Valley were his private property, and was not aware that the Proctor lands were included in the sheriff's sale; that therefore the said declarations were void in relation to the Proctor lands, viz., the lands in the name of Cox, Donagan, and Trent.

12th. Because the verdict is manifestly wrong, as it charges the defendants with the proceeds of the tracts in the names of William Cox and Christian Donegan, which tracts were the private property of Joseph Simon.

13th. The verdict is manifestly wrong, because no credit is given for the proceeds of the tract in the name of Wm. Trent, paid by J. Simon in his lifetime to the plaintiff's intestate by mistake, and to which the said plaintiffs and their intestate had no claim.

14th. Because the court erred in charging the jury that the deed of 28th February, 1769, from Wm. Trent to Joseph Simon, for a moiety of the ten tracts derived from Proctor, was a mortgage.

15th. Because the court erred in charging the jury, that if the said deed was a mortgage, the private debt of J. Simon was from the length of time to be considered as satisfied, and that J. Simon had no title.

16th. Because the court ought to have charged the jury, that if the deed of 28th February, 1769, was originally a mortgage, the possession of the title papers by Jos. Simon, the possession and claim of ownership over the George's Valley lands, which he believed to be the Proctor lands, and the lapse of time, were circumstances for their consideration, from which they might infer, that the paper called a defeazance executed by L. A. Levy, on the 28th February, 1769, had been surrendered by W. Trent to Joseph Simon, if it ever had been in the possession of or delivered to said Trent, of which there was no evidence.

17th. The verdict is manifestly wrong, because the jury have found the full amount of interest from the time of the several receipts of money claimed by plaintiffs, although there was no evidence of any demand for any sums recovered since 1806.

18th. Because the court did not answer the second point of the defendants.

19th. The court should have submitted to the jury, as being their peculiar province, the questions of fraud or mistake raised in the points submitted to the court by the defendants.

J. SIMON COHEN,
B. CHAMPNEYS,
HENRY ROGERS,
Attorneys for Defendant.

LANCASTER CITY, *ss.*

Levi Phillips, being duly sworn, deposeth that the foregoing reasons are correct and true to the best of his knowledge and belief.

(Signed,) LEVI PHILLIPS.

Sworn and subscribed before me, May 4th, 1830.

SAMUEL DALE.

[Endorsed] 1

September term, 1828.

GRATZ'S ADMINISTRATORS
vs.
LEVI PHILLIPS et al.

Motion and reasons for a new trial, filed May 4th, 1830.

M. GRATZ'S ADMINISTRATORS
vs.
LEVI PHILLIPS et al.

In the circuit court of Lancaster county.

The counsel for the plaintiffs pray the court to charge the jury upon the following points:

1. That as it is expressly stipulated by the agreement, under which this suit is entered in the common pleas of Lancaster county, to January term, 1822, No. 162, that "no advantage shall be taken as to the form of the suit or the liability of the parties in it," it is not competent for the defendants now to resist a recovery on behalf of the plaintiffs, on the ground that the action is misconceived in point of form, or that the defendants are not jointly liable as trustees of plaintiffs, under the evidence given in the cause.

2. That purchasers for a valuable consideration, bona fide, and without notice of any claim upon the estate, are entitled to the peculiar favor and protection of courts of justice, and as Michael Gratz, the plaintiffs' intestate, purchased from Joseph Simon, for a full and valuable consideration, a moiety of the lands sold to J. Simon, by the sheriff of Northumberland, without notice at the time of the purchase of any title or claim to the lands, by Joseph Simon, or any other person adverse to the title acquired by Joseph Simon, under the sheriff's sale, and constituted him, Joseph Simon, his trustee, to sell the lands thus purchased, it is not competent for the representatives of Joseph Simon now to resist the recovery of the plaintiffs for their half part of the proceeds of the lands sold, on the ground of an outstanding title in favor of third persons.

3. That a trustee cannot dispute a title of his cestui que trust, and therefore the defendants, the representatives of Joseph Simon, cannot resist the title and right of the plaintiffs to recover in this suit; they are estopped by the several deeds given in evidence on part of the plaintiffs from alleging that no title was acquired under the said deeds, by M. Gratz, for all the lands mentioned in them, and the non action and acquiescence of the trustees.

4. That from the lapse of time the jury are bound to presume the trust created by the deed of 20th of March, 1786, from David Franks to Amos Hayton's assignees, satisfied and extinguished, and that this stale and abondoned claim can form no bar to the plaintiffs' right to recover in this suit.

5. That if the jury believe, that in August, 1790, when Joseph Simon purchased at the sheriff's sale, and sold a moiety of the lands

purchased to M. Gratz, he, J. Simon, had and possessed the title papers to the tracts, Robert Sample, Thomas Cumshine, Francis Silver, Joseph Silver, and Samuel Sample, called now the George's Valley lands, he did know, or was bound to know, that these lands were acquired under the deed of 26th of April, 1779, from W. Trent, in payment of the bond and mortgage given to Franks and Simon, and were company property, and not his own private estate; and that the impression of Joseph Simon, wheresoever derived, that the George's Valley lands were his private estate, cannot affect M. Gratz, who was a bona fide purchaser on the 2d of August, 1790, of the tracts of land now claimed by the representatives of Joseph Simon.

6. That if the jury believe that Joseph Simon made the declarations of trust of 2d of August, 1790, of 26th of July, 1802, the compromise with John F. Mifflin, on the 30th December, 1802, and the declarations of trust of 12th of January, 1804, without the circumvention or fraud of M. Gratz, or of any person acting as his agent, practised upon him in order to procure these papers, then Joseph Simon and his representatives are estopped in conscience, justice, and law, from denying the right of M. Gratz and his representatives to recover the half of the nett proceeds of the sale of the tracts of land in the name of Cox, Donagan, and Trent, even if Joseph Simon, himself, entertained a mistaken impression as to what were his George's Valley lands, from 1790 till his death in 1804.

WILLIAM NORRIS,
JOHN R. MONTGOMERY,
Counsel for Plaintiffs.

April 29th, 1830.

[Endorsed] "Points of plaintiffs and defendants."

Executors of Michael Gratz, deceased,
vs.
Levi Phillips, Leah Phillips, and Belah Cohen.

In circuit court.

The court is respectfully requested to charge the jury upon the following points, and file their charge:

1. That the assignment of D. Franks to Bernard and Michael, and Michael Gratz, of the 18th of May, 1790, under which plaintiff's claim is invalid, the said D. Franks having, by a previous assignment, dated 20th of March, 1786, transferred his property, real and personal, and that the acceptance of the order, and the several declarations of trust made upon the faith of the validity of the assignment of 1790, are not binding.

2. If the jury believe that the acceptance of the order and the declarations of trust were made by Jos. Simon, under the belief that the tracts called the George's Valley lands were his private property; and if it were well known to Simon Gratz, the agent of Michael Gratz, that such were Mr. Simon's impressions, the concealment of the claim upon the part of Michael Gratz and his agent, is a fraud which will vitiate the whole transaction.

3. The plaintiff's cannot recover in this action, unless they prove receipt of money by defendants jointly; and the coverture of Leah Phillips, one of defendants, is a fatal objection to plaintiff's recovery.

4. This suit should have been instituted against the defendants as executors of Jos. Simon, deceased.

5. If the jury believe that the tract in the name of William Cox, sold to John Wicks, and the one in the name of Christian Donagan, sold to Geo. Knapp, called the Proctor lands, were the private property of Jos. Simon, the defendants are not liable to account for them. Defendants, for same reason, would be entitled to a credit or set-off, for the amount of tract in the name of Wm. Trent, heretofore accounted for by mistake.

J. SIMON COHEN,
B. CHAMPNEYS,
HENRY ROGERS.

Endorsed.

Administrators of M. Gratz vs. Levi Phillips, Leah Phillips, and Belah Cohen. Points.

In the circuit court of Lancaster county.

Simon Gratz, Joseph Gratz, and Jacob Gratz, adm's of Michael Gratz, deceased,
vs.
Levi Philips, Leah Philips, and Belah Cohen.

September term, 1828, No. 1. Action on the case.

Levi Philips, Leah Philips, and Belah Cohen, executors of Joseph Simon, deceased,
vs.
Simon Gratz, Joseph Gratz, and Jacob Gratz, adm's of Michael Gratz, deceased.

September term, 1828, No. 2. Action of covenant.

And now, April 8th, 1829, rule to take the depositions of ancient, infirm, and going witnesses, to be read in evidence on the trial of these causes, in case of their death, absence out of the county, or inability to attend. Ex parte rule on ten days notice.

[SEAL.] Attest, For N. W. SAMPLE, Jr., *Clerk C. C.*
CHRISTIAN BACHMAN.

In pursuance of the above rules of court, personally appeared before me, the subscriber, one of the justices of the peace in and for the Commonwealth of Pennsylvania, Molton C. Rogers, who being duly sworn, doth depose and say, that at the reference which took place between the parties in the summer of 1822, Simon Gratz spoke of his knowledge of the title of lands derived of Simon from Wm. Trent; that he

resided a considerable time with his grandfather, and had access, I think he said, to his papers and transacted business for him: he stated, and it was stated during the course of the trial, that Joseph Simon could not read nor write, except his name; that he had in his possession the papers of Wm. Trent, contained in a trunk which he, Simon Gratz, examined some time about the year 1797, or before the death of Joseph Simon. Simon Gratz admitted that Joseph Simon always supposed that the George's Valley lands were his private property. Simon Gratz also stated, if my recollection serves me, that the account render in 1807 was decided on the principle of their being entitled under the assignment of Hayton, and the papers, which I do not now distinctly recollect, subsequent to the assignment.

MOLTON C. ROGERS.

Mr. William Norris appears for the plaintiffs.
Sworn and subscribed before me, April the 24th, 1829.
Coram PETER NAGLE.

(Endorsed) 1.2. September term, 1828.

GRATZ vs. PHILIPS.

Rule to take deps., filed April 29th, 1829.

Depositions of witnesses taken before me, one of the aldermen of the city of Philadelphia, at my office, South Fourth street, in said city, on the 20th day of April, 1830, at 4 o'clock in the afternoon of that day, in pursuance of the annexed rules and notice; Simon Gratz appearing. Charles Smith, being duly affirmed, deposeth and saith, that he was a subscribing witness to the paper here shown him, marked "A. S." dated the 26th day of July, 1802, and that he was present and saw the same duly executed by Simon Gratz, agent to Michael Gratz, and that the signature is in the handwriting of the said Simon Gratz, and that the name of this affirmant attached thereto, as a subscribing witness, is in his handwriting; and that he was present when Abraham M. Cohen, the other subscribing witness, signed his name thereto. I knew Mr. Joseph Simon in his lifetime, for a number of years. I do not know positively, but am inclined to think he could not write more than his own name. I never saw him write anything else.

Simon Gratz, one of the defendants, appeared, and declined cross-examining.

CHARLES SMITH.

Taken, affirmed, and subscribed, April 20th, 1830, before
ABM. SHOEMAKER, *Ald.*

Zalegman Philips, esq., of the city of Philadelphia, attorney-at-law, being duly sworn, deposeth and saith, that he was counsel for the executors of Joseph Simon in an action of account render, brought by

Michael Gratz against them, tried at a nisi prius before C. J. Tilghman, in February, 1810; there were several claims, one for a body of 1912 acres of land, and another tract, called Stewart's tract, about 334 acres, and another for five tracts of land, called the George's Valley lands; the names of the warrantees of the five last mentioned tracts, were Joseph Silver, Francis Silver, Samuel Sample, Robert Sample, and Thomas Carneclyre. The right in which the plaintiff claimed the five tracts of land, called the George's Valley lands, was under David Franks, as deriving title from him; this deponent means, by a claim of the George's Valley lands, a claim for the proceeds for the sales of those tracts.

One branch of the defence to the five George's Valley tracts of land was, that they were the private property of Joseph Simon, treated by him as his own, and considered as his own; there was an entry given in evidence in the handwriting of Simon Gratz, in the books of Joseph Simon, charging expenses as of "my George's Valley lands," referring to Mr. Simon himself; the main ground was, that they were the Proctor lands, derived through Proctor and Spear; the plaintiff resisted the defence, that the George's Valley lands were the Proctors'; among other matters produced various locations, I think, alleged by the plaintiffs to be in the handwriting of Wm. Trent, whose handwriting was proved by Mr. Tench Cox, which locations went to show, as the plaintiff's contended, that the lands then described in those locations were the real Proctor lands, and that the George's Valley lands were not the Proctor lands.

Z. PHILLIPS.

A cross examination was declined.

Sworn and subscribed, April 20th, 1830, before
ABM. SHOEMAKER.

The ADMINISTRATORS OF MICHAEL GRATZ, deceased,
vs.
LEVI PHILLIPS, LEA PHILLIPS, AND BELAH COHEN.

We have carefully considered all the exceptions filed to the award made in this case, and the documents referred to in the argument. From the view which we have taken of it, it is only necessary to deliver our opinion upon the eleventh and last exception, which appears to us to be fatal to the confirmation of this award. There is no point better settled than that an award should be certain and final. The arbitrators, to whom the case was referred, have found for the plaintiffs the sum of $5,211 61, arising out of the moneys actually received for the sale of lands as far as account sales for the same have been furnished to the arbitrators; they also find the sum of $1,839 86, to be due to the plaintiffs, being the half of the amount of sales of land, now outstanding, as far as the same has been exhibited to the arbitrators, which sum of $1,839 86, to be paid to the plaintiffs, as the same shall come to the hands of defendants. A paper is annexed to the award,

marked A, containing an account of the sales of land upon which the award is made, and exhibiting the amount of sales outstanding, which the arbitrators desire may be considered as a part of their award; with respect to the sum of $1,839 86, all is uncertain and inconclusive. It relates to moneys to be collected in future. No time fixed at which the defendants become responsible; no mode determined of ascertaining when the moneys are received, or what amount may be paid in; nor have the plaintiffs any remedy for enforcing the payment of what may be collected.

We cannot give judgment for the $5,211 61, because it is admitted that there are errors which will reduce that sum to a lower amount. But admitting that the award may be confirmed as to the sum of $5,211 61, and rejected as to the rest, it appears to us there is no removing the difficulty occasioned by the eleventh exception, viz., that the referees have erred in giving a general award against all the defendants, when, in fact, Levi Phillips was the only defendant who received any of the sums stated; and there was no evidence before them that either of the other defendants received any part of them.

We have considered the agreement under which the reference took place, and have given full weight to the argument founded on that part of it, which says, that no advantage shall be taken by either party, as to the form of suit or the liability of the parties; and are of opinion, that whatever might be the motive for introducing the stipulation, it will, by no means, admit of such a construction as to render liable either of the defendants to the payment of any money which it may clearly appear he has never received, and for which, in law, he is not responsible.

Belah Cohen received no part of the money in dispute, and yet there is no distinction in the award between her and the other defendants; in this, therefore, there is manifest error, and the award must be set aside.

[Endorsed] 162.

January term, 1822.

Opinion of court, June 10th, 1824, filed.

GRATZ's administrators
vs.
PHILLIPS et al.

Filed by request of counsel for the plaintiffs.

In the court of common pleas of Lancaster county, of January term, 1822. No. 162.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased,
vs.
LEVI PHILLIPS, Leah Phillips, and Belah Cohen.

Amicable action on the case sur report of referees.

The defendants except to the report of referees, for the following reasons:

1. That the referees have erred in charging the defendants the sum of $859 56, the amount of moneys received, arising from the sale of tract, in the name of Wm. Coxe, with interest, for which they are not accountable; the said tract being the private property of J. Simon.

2. That the referees have erred in charging $858 46, amount of principal and interest received from sale of tract, in the name of C. Donagan, also claimed as the private property of J. Simon.

3. Because the referees have not allowed a credit for $116 25, principal, with interest, it being for moneys received from J. F. Mifflin, for sale of tract in the name of John Glenn, which tract is supposed to be the private property of J. Simon.

4. Because the referees have charged thirteen years and seven months interest on $337 20, received from S. Brick, when in fact the said amount was received only on 22d January, 1819.

5. Because the referees have not allowed a credit for $725 69, the nett proceeds of tract in the name of William Trent, sold in 1795, and for which the estate of J. Simon, was charged to plaintiffs, in an account settled between the plaintiffs, intestate, and B. Cohen, one of the executors of the said Jos. Simon, the said charge being made by mistake.

6. Because the referees have allowed but $13 06, together with interest thereon, for amount paid to C. Walsmith, when, in fact, $26 12, and interest thereon, ought to have been allowed.

7. Because they have allowed but $50, and the interest thereon, for a fee paid to C. Hall, esq., when they should have allowed $100, the moiety of said fee, with interest thereon.

8. Because the referees have not power to award any sums which may come into the hands of the defendants, and which have not been actually received.

9. Because they have erred in charging the defendants with $566 10, amount to be received from tract in the name of William Coxe, and with $378 43, amount to be received from tract in the name of C. Donagan; the said tracts being claimed as the private property of J. Simon; and also with the sum of $64 12 amount to be received for tract in name of Jno. Glenn, it being presumed to be private property of J. Simon.

10. Because they have erred in charging defendants with $114 23, part of the $700 received from J. F. Mifflin, on account of sales of Bedford lands, reported by them as outstanding.

11. Because the referees have erred in giving a general award against all the defendants, when, in fact, Levi Philips was the only defendant who received any of the sums stated; and there was no evidence before them that either of the other defendants received any part thereof.

12. Because manifest injustice has been done to the defendants, and that the referees have made clear and manifest errors in matters of fact and law.

MOLTON C. ROGERS,
Attorney for Defendants.

Personally appeared before me, the subscriber, one of the aldermen of the city of Lancaster, Levi Phillips, who being duly sworn, doth say, that the exceptions, as above stated, are just and true, according to the best of his knowledge and belief. LEVI PHILLIPS.

Sworn and subscribed before me, August 12th, 1822.

D. MOORE.

[Endorsed] January term, 1822.

GRATZ'S ADMINISTRATORS
vs.
LEVI PHILIPS et al. } 162.

Exceptions to the report of referees, filed August 12th, 1822.

In the court of common pleas of Lancaster county, of January term, 1822, No. 162.

SIMON GRATZ, Joseph Gratz, and Jacob Gratz, administrators of Michael Gratz, deceased,
vs.
LEVI PHILLIPS, Leah Phillips, and Belah Phillips.

Sur report of referees.

Additional exceptions to the report of referees in this case.

Because the award is neither certain nor final.

MOLTON C. ROGERS,
Attorney for Defendants.

[Endorsed] January term, 1822.

GRATZ'S ADMINISTRATORS
vs.
LEVI PHILLIPS et al.

Additional exceptions, filed May 3d, 1824.

A.

The administrators of Joseph Simons
To the representatives of Michael Gratz, DR.

1805.			
May 28.	For sale of land in the name of William Cox, sold to John Wicks for $2,051, M. Gratz's one-half is -	$1,025	00
June 5.	Cash received on account, by J. Simon, $300, M. Gratz's one-half is	150	00
	Interest to July, 1822, is 17 years and 1 month - - - -	153	75
1806.			
Feb. 18.	Cash received on account, by J. Simon, $432 80, one-half is -	216	40
	Interest to July, 1822, is 16 years and 5 months - - - -	213	15

1817.				
Aug. 8.	Cash received on account, by J. Simon, $185, one-half is - -		97 50	
	Interest to July, 1822, is 4 years and 11 months - - - - -		28 76	
1804.				$859 56
Mar. 13.	To sale of tract in the name of Thomas Trent to Daniel Musser, for $2,274 26, one-fourth is - -		568 56	
Nov. 20.	Cash received by J. Simons on account, $400, one-half is - -		200 00	
	Interest to July, 1822, is 17 years and 8 months - - - - -		213 00	
1805.				
Nov. 9.	Cash received by J. S. on account, $82 53, one-half is - - -		41 26	
	Interest to July, 1822, 16 years and 8 months - - - - - -		41 26½	
1813.				
Mar. 24.	Cash received by J. S. on account, $133 33, one-half is - - -		66 66½	
	Interest to July, 1822, 9 years and 4 months - - - - - -		37 32½	
1805.				599 52
May 6.	To sale of tract in the name of James Ferguson to Peter Fiss, (Mr. Mifflin made a separate sale of his interest,) our half was sold for $1,350, M. Gratz's half is -		675 25	
1809.				
Sept. 9.	Cash received by J. S. on account, $133 33, one-half is - -		66 66½	
	Interest to July 22, 12 years and 10 months - - - - - -		51 32½	
1810.				
Aug. 25.	Cash received by J. S. on account, $160, one-half is - - -		80 00	
	Interest to July, 1822, 11 years and 11 months - - - - -		57 20	
1813.				
Nov. 3.	Cash received by J. S. on account, $251 50, one-half is - -		125 75	
	Interest to July, 1822, 8 years and 8 months - - - - - -		65 39	
1817.				
Feb. 4.	Cash received by J. S. on account, $257, one-half is - - -		128 50	
	Interest to July, 1822, 5 years and 5 months - - - - - -		41 76	

1811.
Nov. 9. Cash received by J. S. on account, $56, half is - - - - 28 00
Interest to July, 1822, 3 years and 8 months - - - - - 6 16
650 75

May 27, To sale of tract in the name of John Owens, sr., sold to David Stayenger; (Mr. Miflin made a separate sale of his one-half;) our half was sold for - - - - $1,005 63
M. Gratz's half, received by J. S., is 502 81½
Int. to July, 1822, 17 years and 2 m'ths 517 88½
1,020 70

May 27, To ditto in the name of John Harry & Alexander Grant, sold to Startle & Willelm, for - - $1,313 18
Deduct expenses to Reynolds and Bennet - - 212 78
1,100 40½ is 275 10
Int. to July, 1822, is 17 years and 2 months - - - - 283 35
558 45

Ditto in the name of Michael Young, sold to Corns aud Hoffman, for $300; M. Gratz's one-fourth is $75.
1813. May 10, Received by J. S. on acc't, $75, ½ is $37 50
Int. to July, 1822, is 9 years and 2 months - - - - 20 62
1808. 58 12
Nov. 22, Ditto in the name of C. Donagan, sold to G. Knepp for $1,818; half is $944. Cash received by J. S. on account, $275 15; ½ is $137 57½
Int. to July, 1822, is 13 yrs. and 8 m'ths 112 80½
May 24, 1813, Cash rec'd by J. S. on account, $500; one-half is - - - 250 00
Int. to July, 1822, is 9 yrs. and 2 months 137 50
May 27, 1817, Cash rec'd by J. S. on acc't, $156; one-half is - - - - 78 00
Int. to July 22, is 5 years and 2 months 28 08
Feb. 20, 1820, Cash rec'd by J. S. on acc't, $200; one-half is - - - 100 00
Int. to July, 1822, is 2 years and 5 months 14 50
858 46

1809. Amount carried forward, &c. - $4,605 56
Feb. 24, To sale of tract of land in the name of John Glenn, sold to Adam Bear for $556 50; M. Gratz's one-fourth is - - $139 12½

May 10, 1813, Cash rec'd of J. S. on account, $150 00; one-fourth is - - 75 00
Int. to July, 1822, is 9 yrs. and 2 m'ths 41 25
116 25

Ditto in the name of W. Forster, sold to Abraham Swaber for $770 07; one-fourth is $192 51½
May 10, 1813, Cash rec'd by J. S. on account, $80 00; one-fourth is - - 20 00
Int. to July, 1822, is 9 years and 2 m'ths 11 00
31 00

Aug. 23, Ditto in the name of John George, sold to John Bolander for $1,200; one-fourth is $300.
May 10, 1813, Rec'd by J. S., in full, including interest - - - - $310 29
Int. to July, 1822, is 9 yrs. and 2 m'ths 170 65
480 94

1813.
Mar. 13, To ditto—say cash received from J. Simon's representatives from John F. Mifflin, on account sales of Bedford county lands, $1,400; one-half is $700. For amount received by J. S., as per J. F. Mifflin's account, appears to be $1171 55, one-half (received May 10, 1813,) is $585 77½
Int. to July, 1822, is 9 years and 2 m'ths 312 16
907 94

1818.
Dec. 13, To cash received by J. S. from S. Brick, on account of Bedford county lands, of $674 40; one-half is - - - - 337 20
Int. to July, 1822, is 13 years and 7 m'ths 274 81
612 01

$6,753 70

1790. CREDITS.

Aug. 25, By account paid by J. Simon to Christian Wallsmith, to release a tract of land in the name of W. Forster, purchased at commissioners' sale for taxes, $52 26; one-fourth is - $13 06
Int. to July, 1822, is 31 years 11 months 25 00
38 06

1803.
April 22, By a fee paid by J. S. to Reynolds, for surveying lands in Bedford county, &c., $200; one-fourth is $50.
One-half of probate of Davis's deed to Kelligs, and taxes in Dooley's tract in Bedford co., and ¼ recording deeds - - $8 46 $58 46½
Int. to July, 1822, is 19 yrs. and 3 months 67 51½
125 98

2082

1804.
Oct. 22, By L. Phillips' expenses to Bedford and Middle Creek, and postage, $34 25; one-half is - - - $17 12
Int. on ½ the balance to J. F. Mifflin of - 1,227 03
For settlement account No. 1, to the payment of Mr. B. Cohen; one-half is - - 113 60
130 72½
Int. to July, 1822, 17 yrs. and 9 months 139 20½
269 93

1805.
May 3, L. Philips, expenses to Middle creek, $11 62½, one-half is - - $5 81
Aug. 27, Fees to Charles Hall - - 50 00
Nov. 28, Expenses, postage, &c., $16 82, one-half is - - - - - 8 41
64 22
Int. for August, 1805, to July, 1822, is 16 years and 11 mos. 65 18
129 40

1806.
Feb. 18, Surveying fees, $40, one-half is 20 00
Interest to July, 1822, is 16 yrs. and 5 months - - - 19 70
39 70

Aug. 1, Patenting lands sold to J. Wicks and expenses 130 73
Fee paid Brown 60 00
190 73 one-half is 95 36
Int. to July, 1822, is 15 yrs. and 11 months - - - - 91 08
186 45

1807.
May 27, Fee paid Brown for moving, at Bedford court, for a new trial for lands in the name of Saunders, Frazer, and Weed, one-half - - - - - 30 00
Interest to July, 1822, is 15 yrs. and 2 months - - - 27 30
57 30

1809.
April 10, Fee paid to John Weed, to obtain in bank a new trial at Bedford, for lands in name of Frazer and Wood, one-half - 50 00

Interest to July, 1822, is 13 yrs. and 3 months - - -	39 75		
		89 75	
Amount carried forward, &c.,		936 57	6,753 70
1818.			
May 12, By balance paid to E. Bond, executor of John F. Mifflin, upon renouncing his executorship, $8 84, one-half is -	4 42		
Interest to July, 1822, is 4 years and 2 months - - -	1 10		
		5 52	
Commissions allowed by arbitrators to defendants on sales of lands so far accounted for -		600 00	
			1,542 09
Balance due to the representatives of Michael Gratz - - - - - -			$5,211 61

The following amounts are outstanding on account sales of land, so far as the accounts of the same have been exhibited to the arbitrators, leaving a balance of $1,839 86, to be paid to the representatives of Michael Gratz by the representatives of Jos. Simon whenever the same shall come to their hands, viz:

Tract of land in the name of W. Cox sold, one-half is - - - - -	$1,025 00	
Charged on the foregoing account as received by J. S. - - - -	458 90	
		566 10
Do. in the name of C. Donegan, one-half -	944 00	
Charged in the foregoing account - -	565 57	
		378 43
Do. in the name of Thomas Street, one-fourth -	568 56	
Charged in the foregoing account - -	307 93	
		260 63
Do. in the name of James Ferguson - -	675 25	
Charged in the foregoing account - -	428 91	
		246 34
Do. in the name of Michael Young - -	75 00	
Charged in the foregoing account - -	37 50	
		37 50
Do. in the name of John Glenn - -	139 12	
Charged in foregoing account - -	75 00	
		64 12
Do. in the name of W. Forster - - -	192 51	
Charged in foregoing account - - -	20 00	
		172 51

Cash received of John F. Mifflin, on account sales of Bedford lands - - -	700 00		
Charged in foregoing account - - -	585 00		
			114 23
Outstanding - - -			$1,839 86

CASPER SHAFNER, JR.
JNO. REYNOLDS.
JOS. OGILBY.

LANCASTER, *August 8th*, 1822.

In the court of common pleas of Lancaster county.

SIMON GRATZ, JOSEPH GRATZ, and Jacob Gratz, administors of Michael Gratz, deceased, vs. LEVI PHILIPS, LEAH PHILIPS, and Belah Cohen. } January term, 1822, No. 162, amicable action of the case, entered January 30th, 1822.

And by an agreement in writing, filed, all matters in variance between the parties are referred to Casper Shaffner, jr., John Reynolds, and Joseph Ogilby, or a majority of them, to meet at the house of Col. Jacob Slough, in the city of Lancaster, at any time the parties shall agree upon, upon thirty days' notice, and to make their award into the prothonotary's office, with power to adjourn from time to time until the cause shall be decided; the arbitrators to have no power in relation to any lands unsold at the time of instituting this suit, and that no advantage be taken by either party, or the form of suit, or as to the liability of the parties in it; and that the award and judgment thereon be final.

Attest: For F. A. MUHLENBURG, *Prothonotary*,
[SEAL.] CHRISTIAN BACHMAN.

Thursday, May 30th, 1822, arbitrators met at 10 o'clock, a. m., at the house of Col. Slough, and adjourned to meet at the same place at any time the parties shall agree upon.

Thursday, June 13th, 1822, arbitrators met agreeably to notice given them by the parties, and being severally sworn or affirmed according to law, and at the request of the parties, adjourned to meet on Monday, the 17th of June, inst., at 9 o'clock, a. m., at the house of Col. Jacob Slough.

Monday, June 17th, 1822, arbitrators met agreeaby to adjournment, and after making considerable progress, adjourned to meet to-morrow morning at 9 o'clock, at Col. Slough's.

Tuesday, June 18th, 1822, arbitrators met agreeably to adjournment, and after making progress, adjourned to meet on Thursday, the 20th instant, at 9 o'clock, a. m., at Col. Slough's.

Thursday, June 20th, 1822, arbitrators met agreeably to adjournment, and adjourned to meet to-morrow morning, the 21st instant, at 9 o'clock, a. m., at Col. Slough's.

Friday, June 21st, 1822, arbitrators met according to adjournment, and adjourned to meet on Monday the 24th instant, at 9 o'clock, a. m., at Col. Slough's.

Monday, June 24th, 1822, arbitrators met agreeably to adjournment, and adjourned to meet to-morrow morning, the 25th instant, at 10 o'clock, at Col. Slough's.

Tuesday, June 25th, 1822, arbitrators met according to adjournment, and adjourned to meet on Wednesday, the 26th instant, at 2 o'clock, p. m., at Col. Slough's.

Wednesday, June 26th, 1822, arbitrators met according to adjournment, and adjourned to meet on Thursday the 27th instant, at 10 o'clock, p. m., at Col. Slough's.

Thursday, June 27th, 1822, arbitrators then met, and adjourned to meet on Friday the 28th instant, at 10 o'clock, a. m., at Col. Slough's.

Friday, June 28th, 1822, arbitrators then met, and adjourned to meet on Tuesday the 2d of July next, at 9 o'clock, a. m., at Col. Slough's.

Tuesday, July 2d, 1822, arbitrators met, and adjourned to meet on Tuesday the 16th instant, at 10 o'clock, a. m., at Col Slough's.

Tuesday, July 16th, 1822, arbitrators then met pursuant to adjournment, and adjourned until to-morrow, 17th instant, at 10 o'clock, a. m., at Col. Slough's.

Wednesday, July 17th, 1822, arbitrators met, and adjourned until Friday the 19th instant, at 7 o'clock in the morning, at Col. Slough's.

Friday, July 19th, 1822, arbitrators met and adjourned until Tuesday the 23d instant, at 10 o'clock, a. m., at Col. Slough's.

Tuesday, July 23d, 1822, arbitrators met, and adjourned until to-morrow, (Wednesday, 24th instant,) at 10 o'clock, a. m., at Col. Slough's.

Wednesday, July 24th, 1822, arbitrators met, and adjourned till to-morrow, (Thursday, the 25th,) at 10 o'clock, a. m., at Col. Slough's

Thursday, July 25th, 1822, arbitrators met, and adjourned to meet on Wednesday the 31st instant, at 10 o'clock, a. m., at Col. Slough's.

Wednesday, July 31st, 1822, arbitrators met, and adjourned till to-morrow, (Thursday, August 1st,) at 8 o'clock, a. m., at Col. Slough's.

Thursday, August 1st, 1822, arbitrators met, and adjourned until to-morrow, Aug. 2d, at 9½ o'clock, a. m., at Col. Slough's.

Friday, August 2d, 1822, arbitrators met, and adjourned until to-morrow, (Aug. 3d,) at 10 o'clock, a. m., at Col. Slough's.

Saturday, August 3d, 1822, arbitrators met, and adjourned until Monday, August 5th instant, at 5 o'clock, a. m., at Col. Slough's.

Monday, August 5th, 1822, arbitrators met at 5 o'clock, a. m., and adjourned to meet on Tuesday, Aug. 6th instant, at 3 o'clock, p. m., at Col. Slough's.

Tuesday, Aug. 6th, 1822, arbitrators met, and adjourned until to-morrow, (Wednesday,) Aug. 7th, at 3 o'clock, p. m., at Col. Slough's.

2090.

Wednesday Aug. 7th, 1822, arbitrators met, and adjourned until tomorrow, Aug. 8th, at 10 o'clock, a. m., at Col. Slough's.

Thursday, August 8th, 1822, the arbitrators met pursuant to adjournment, and report, that after an attentive hearing of the parties, their proofs and allegations, and after a careful examination of the evidence submitted to them, do now find for the plaintiffs the sum of five thousand two hundred and eleven dollars and sixty-one cents, arising out of the moneys actually received for the sale of lands, as far as the account sales for the same have been furnished to the arbitrators.

They also find the sum of eighteen hundred and thirty-nine dollars and eighty-six cents due to the plaintiffs, being the half of the amount of sales of land now outstanding, as far as the same has been exhibited to the arbitrators, which sum of $1839 86 to be paid to plaintiffs, as the same shall come to the hands of defendants. The annexed paper A, containing the account of the sales of land upon which this award is made, and exhibiting the amount of sales outstanding, the arbitrators desire may be considered as a part of their award.

Arbs. $75, paid by pl'ffs.

Signed, CASPER SHAFFNER,
JNO. REYNOLDS,
JOS. OGILBY.

[Endorsed,] January Term, 1822.

MICHAEL GRATZ'S adm's, vs. PHILLIPS et al. } 162. Rule of reference.

Report filed August 10, 1822.

In pursuance of a rule of court, personally appeared before me, the subscriber, one of the aldermen in and for the city of Lancaster, Joseph Ogilby, esq., who being affirmed according to law declareth and saith, that he was one of the referees in this case, in company with Messrs. Shaffner and Reynolds.

Question by Mr. Cohen. Do you or do you not remember whether there was any evidence produced of any moneys arising from the sales of lands being received by any of the defendants but Levi Phillips?

Answer. I do not recollect.

Question. Which of the referees took the notes of the proceedings?

Answer. Mr. Reynolds did; except half day, I did. I do not know which that was in.

Question. Do you or not remember that an account, No. 2, was furnished by said defendant, Levi Phillips, at the request of said referees, containing a statement of his account; and were or were not answers to the several items in that account put in by Mr. Gratz?

Answer. There was an account furnished, whether No. 2 or No. 1, I cannot tell, and there were answers put to the items by Mr. Gratz.

Question. Did or did it not appear before you that Simon Gratz was, for a considerable time, in the employ of Joseph Simon, and also a

partner in his mercantile transactions? Objected to by plaintiff's counsel.

Answer. It did appear to us he was employed by him, and kept his accounts for a long time, but no partner as I recollect.

Question. Was it or was it not admitted that Simon Gratz had access to all the papers of Joseph Simon, and had an accurate knowledge of his land transactions? Objected to by plaintiff's counsel.

Answer. I can't say it was admitted that he had access to all his papers, but it appeared to us that Mr. Gratz had an accurate knowledge of all his land transactions at the time of reference, but I do not know that he had at the time that he lived with him.

Question. Did it appear before you that, during the lifetime of Jos. Simon, any demand was made by Mr. Gratz for the George's Valley lands? Objections by plaintiffs' counsel.

Answer. I don't recollect now that there was.

Question. Did or did it not appear to you that Jos. Simons, during his lifetime, always considered the George's Valley lands his private property, and that Mr. Gratz admitted this before you? Objected to by plaintiff's counsel.

Answer. I do not recollect that he did; I have no distinct recollection about these lands, or what Mr. Gratz or Mr. Phillips said about them.

Question. Do you recollect what was said by Simon Gratz in relation to the mortgage from Simon to Mullet? Objected to by plaintiffs' counsel.

Answer. I do not.

Question. Did he deny his knowledge of that transaction? Objected to by plaintiffs' counsel.

Answer. I do not recollect any thing about it.

Question. Do you recollect what was said by Mr. Gratz in relation to lands in the name of Camerlyne? Objected to by plaintiffs' counsel.

Answer. I do not; I remember the name, but that is all.

Question. Did it or did it not appear that the papers of Mr. Trent were in the possession and power of Mr. Gratz, and at what time? Objected to by plaintiffs' counsel.

Answer. It did, but I don't recollect at what time; he had a trunk of Mr. Trent's books or papers; he told us how he got possession of it, but I forget now how it was.

Question. Was it not about the year 1797? Objected to by plaintiffs' counsel.

Answer. I cannot recollect what time.

JOS. OGILBY.

Affirmed and subscribed before me, the 20th March, 1824.

NATH'L LIGHTNER.

I certify, that at the taking of the foregoing depositions the counsel of both parties attended.

NATH'L LIGHTNER.

Casper Shaffner, jr., being sworn according to law, deposeth and saith as follows:

I was one of the referees in this case, in company with Messrs. Ogilby and Reynolds.

Question by Mr. Cohen. Do you remember of any evidence *been* on the trial of any money having been received by Mr. Phillips?

Answer. I don't remember.

Question. Do you recollect what admissions were made by Mr. Gratz, in relation to the mortgage to Mullet?

Answer. I don't recollect.

Question. Do you not recollect that it was admitted before the referees that Mr. Simon did not read or write English, except his name?

Answer. It was said there that he could not write, except his name; about the reading, I do not know.

Question. Do you recollect what was said by Mr. Gratz, in relation to the lands in the name of Camerlyne?

Answer. I do not; but I remember the name Camerlyne being mentioned.

Question. Did it not appear before you that Mr. Simon Gratz had, at a very early period, access to Mr. Simon's papers?

Answer. I believe it did appear.

Question. Did it not appear that he had an accurate knowledge of the land transactions at an early period?

Answer. I think it did appear.

Question. Do you or do you not remember whether it appeared before you that any demand was made of Mr. Simon, by the Gratzes, in the lifetime of Mr. Simon, for the George's Valley lands?

Answer. I do not remember.

Question. Was it or was it not stated to you, by Mr. Gratz, that Mr. Simon's attorneys considered the George's Valley lands as his private property?

Answer. I do not remember.

Question by Mr. Norris. Was not Mr. Simon Gratz a clerk in the store of Mr. Simon for many years in Lancaster?

Answer. Yes.

Question by the same. Do you remember when Mr. Simon Gratz went to Philadelphia to commence business for himself?

Answer. I remember when he went, but not the time.

CASPER SHAFFNER, Jr.

Sworn and subscribed before me, the 22d March, 1824.

NATH'L LIGHTNER.

I certify, that at the taking of the foregoing depositions the counsel of both parties attended.

NATH'L LIGHTNER.

Depositions filed March 23d, 1824.

Simon Gratz, Joseph Gratz, and Jacob Gratz, adm's of Michael Gratz, deceased,
vs.
Levi Philips, Leah Philips, and Belah Cohen.

In the court of common pleas, January term, 1822, No. 62.

John Reynolds, being duly affirmed according to law, by consent of parties, declareth and saith as follows:

I was a referee in this case.

Question by Mr. Rogers. Was there any evidence before you that Belah Cohen, one of the defendants, received any money arising from the sale of the lands disposed of under the will by the trustees of Joseph Simon?

Answer. None that I recollect of; but there was evidence of her recieving of Mr. Gratz 1,500 and some dollars, as appeared by the letter of Mr. Gratz of the 7th October, 1804; and I think it was admitted by the parties that that money was received.

Question by same. Was it not admitted that all the money arising from the sale of the property was received by Levi Phillips?

Answer. I don't recollect that any question was made about it. I think there was no difficulty; a reference to the accounts will show the admissions of the parties. (I mean the accounts exhibited by each party.)

Question by same. Was it not in evidence before you that Simon Gratz lived a considerable time with his grandfather, Joseph Simon, in his employ, and that he had access to his papers?

Answer. From a memorandum on my notes it does appear that Mr. Gratz lived with Mr. Simon from the year 1790 till the year 1796; what access he had to the papers of Mr. Simon I do not know.

Question by same. Did it not appear that Mr. Gratz had possession of the papers of Wm. Trent?

Answer. I believe there was a receipt exhibited, dated March 8th, 1796, by Mr. Gratz to William Cox, of Burlington, for papers relative to lands; I am not certain it was the original or a copy; there was something said about a trunk of papers that I believe were Trent's, but at what time it was discovered I don't know; I think it was found by Simon Gratz, (Mr. Simon Gratz here stated, as on the trial, that a trunk of papers was delivered by the widow of Mr. William Trent to David Franks, who deposited them in the store of Michael Gratz about 1786 or '88; and that on the removal of Michael Gratz, about the year 1798, it was discovered that the rats had made depredations on the trunk, and that he, Simon Gratz, then removed the papers and examined them, and found among them the papers relative to the lands of Wm. Trent.

The above circumstances relative to the trunk being now stated by Mr. Simon Gratz, as having been stated by him at the trial, I believe them to be correct, except as to the dates of which I have no recollection.

Question by Mr. Norris. During the trial of this cause, was there any inquiry made about the person or persons defendants who received the money?

Answer. I do not recollect that any particular inquiry was made as to that point.

Question by the same. Was there any controversy made in the discussion of the cause as to that point?

Answer. None that I recollect of.

JNO. REYNOLDS.

Affirmed and subscribed, May, 1824, before me.

NATH'L LIGHTNER.

At the taking of the foregoing depositions the counsel of both parties attended.

NATH'L LIGHTNER.

Deposition of John Reynolds, filed May 3d, 1824.

In the supreme court of the commonwealth of Pennsylvania, for the Lancaster district, of May term, 1831. No. 47.

Simon Gratz, Joseph Gratz, and Jacob Gratz, adm'rs of Michael Gratz, deceased,
vs.
Levi Phillips, Leah Phillips, and Belah Cohen.

Appeal from the circuit court of Lancaster county.

And now, June 1st, 1831, at a supreme court for said district, nolle prosequi entered as to Mrs. Phillips; and judgment of circuit court as to other defendants affirmed.

[SEAL.]

Attest, SAMUEL A. HOUSTON,
Proth'y Lancaster district.

PENNSYLVANIA, *Lancaster county, ss.*

I, Zephaniah M'Lenegan, prothonotary of the court of common pleas, of Lancaster county, and of the district court, the city and county of Lancaster, do certify, that the foregoing exemplification and copy of the record in the suit of the administrators of Michael Gratz, deceased, plaintiffs, and Levi Phillips, Leah Phillips, and Belah Cohen, defendants, is a true copy and exemplification of the said record, so full and entire as the same remains of record in the original, on file in this office.

In testimony whereof I have hereunto set my hand and seal of office, at Lancaster, the second day of June, eighteen hundred and forty-one.

[L. S.]

Z. McLENEGAN, *Proth'y.*

PENNSYLVANIA, *Lancaster county, ss.*

I, Benjamin Champneys, esq., president judge of the court of common pleas, of Lancaster county, do certify, that the foregoing record

and attestation made by Zephaniah McLenegan, prothonotary of the said court, whose name is thereto attached or subscribed, and seal of office affixed, are in due form, and made by the proper officer.

In testimony whereof I have hereunto set my hand, the second day of June, 1841.

B. CHAMPNEYS.

PENNSYLVANIA, *Lancaster county, ss.*

I, Zephaniah McLenegan, prothonotary of the court of common pleas, of the county of Lancaster, do certify, that the honorable Benjamin Champneys, esq., by whom the foregoing attestation is made, whose name is thereto subscribed, was, at the time of making thereof, and still is, president judge of the said court, duly commissioned and sworn; to all whose acts as such full faith and credit are and ought to be given, as well in courts of justice as elsewhere.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said court, at Lancaster, the 2d day of June, 1841.
[L. S.]

Z. McLENEGAN, *Proth'y.*

B.

The account of Bell Cohen, executrix of the testament and last will of Joseph Simon, late of the borough of Lancaster, deceased, as well for so much of the goods and chattels, rights and credits, of the said deceased, as came to the hands of this accountant, as of her payments and disbursements out of the same, as follows, to wit:

	£.	s.	d.
This accountant charges herself with the following sum of money received from Michael Gratz on the 25th September, 1805	589	17	3
Also with interest thereon	257	10	4
Also with the following sums of money received from Levi Phillips, and charged by the order of the court, as follows, to wit:			
1804, May 18th, received from Levi Phillips	24	7	6
1805, " " " "	37	10	0
" August 28th " " "	37	10	0
" Sept. 25th " " "	62	7	6
Also with interest on the last mentioned sums	70	18	3
	1080	0	10

This accountant prays an allowance for the following disbursements, to wit:

	£.	s.	d.
Credit by mistake of the sum received from Michael Gratz	16	14	10

2092.

Cash paid the register for examining and passing this account	1	6	3
Cash paid for counsel and advice in drawing up and in passing this account, and for advice at sundry times concerning the estate	3	15	0
Allowed this accountant for her trouble, &c.	54	00	0
	75	16	1
Balance in the hands of this accountant	1004	4	9
	1080	0	10

Exhibited into the register's office, at Lancaster, the 23d day of December, A. D. 1812, by

BELL COHEN.

Sworn before WILLIAM BAUSMAN,
Register.

LANCASTER COUNTY, *ss*.

I certify the preceding to be a true copy of the original remaining in the register's office of the said county.

Given under my hand and seal of office, at Lancaster, the 24th day of May, anno domini 1841.

[L. S.]

JAMES B. FERREE,
Register.